

**H.R. 3797, THE SATISFYING ENERGY NEEDS AND
SAVING THE ENVIRONMENT (SENSE) ACT; AND
H.R. _____, THE BLOCKING REGULATORY
INTERFERENCE FROM CLOSING KILNS (BRICK)
ACT**

HEARING
BEFORE THE
SUBCOMMITTEE ON ENERGY AND POWER
OF THE
COMMITTEE ON ENERGY AND
COMMERCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTEENTH CONGRESS
SECOND SESSION

FEBRUARY 3, 2016

Serial No. 114–113



Printed for the use of the Committee on Energy and Commerce
energycommerce.house.gov

U.S. GOVERNMENT PUBLISHING OFFICE

99–969

WASHINGTON : 2016

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON ENERGY AND COMMERCE

FRED UPTON, Michigan
Chairman

JOE BARTON, Texas
Chairman Emeritus
ED WHITFIELD, Kentucky
JOHN SHIMKUS, Illinois
JOSEPH R. PITTS, Pennsylvania
GREG WALDEN, Oregon
TIM MURPHY, Pennsylvania
MICHAEL C. BURGESS, Texas
MARSHA BLACKBURN, Tennessee

Vice Chairman
STEVE SCALISE, Louisiana
ROBERT E. LATTA, Ohio
CATHY McMORRIS RODGERS, Washington
GREGG HARPER, Mississippi
LEONARD LANCE, New Jersey
BRETT GUTHRIE, Kentucky
PETE OLSON, Texas
DAVID B. MCKINLEY, West Virginia
MIKE POMPEO, Kansas
ADAM KINZINGER, Illinois
H. MORGAN GRIFFITH, Virginia
GUS M. BILIRAKIS, Florida
BILL JOHNSON, Ohio
BILLY LONG, Missouri
RENEE L. ELLMERS, North Carolina
LARRY BUCSHON, Indiana
BILL FLORES, Texas
SUSAN W. BROOKS, Indiana
MARKWAYNE MULLIN, Oklahoma
RICHARD HUDSON, North Carolina
CHRIS COLLINS, New York
KEVIN CRAMER, North Dakota

FRANK PALLONE, JR., New Jersey
Ranking Member
BOBBY L. RUSH, Illinois
ANNA G. ESHOO, California
ELIOT L. ENGEL, New York
GENE GREEN, Texas
DIANA DeGETTE, Colorado
LOIS CAPPS, California
MICHAEL F. DOYLE, Pennsylvania
JANICE D. SCHAKOWSKY, Illinois
G.K. BUTTERFIELD, North Carolina
DORIS O. MATSUI, California
KATHY CASTOR, Florida
JOHN P. SARBANES, Maryland
JERRY McNERNEY, California
PETER WELCH, Vermont
BEN RAY LUJAN, New Mexico
PAUL TONKO, New York
JOHN A. YARMUTH, Kentucky
YVETTE D. CLARKE, New York
DAVID LOEBSACK, Iowa
KURT SCHRADER, Oregon
JOSEPH P. KENNEDY, III, Massachusetts
TONY CARDENAS, California

SUBCOMMITTEE ON ENERGY AND POWER

ED WHITFIELD, Kentucky
Chairman

PETE OLSON, Texas
Vice Chairman

JOHN SHIMKUS, Illinois

JOSEPH R. PITTS, Pennsylvania

ROBERT E. LATTA, Ohio

GREGG HARPER, Vice Chairman

DAVID B. MCKINLEY, West Virginia

MIKE POMPEO, Kansas

ADAM KINZINGER, Illinois

H. MORGAN GRIFFITH, Virginia

BILL JOHNSON, Ohio

BILLY LONG, Missouri

RENEE L. ELLMERS, North Carolina

BILL FLORES, Texas

MARKWAYNE MULLIN, Oklahoma

RICHARD HUDSON, North Carolina

JOE BARTON, Texas

FRED UPTON, Michigan (*ex officio*)

BOBBY L. RUSH, Illinois
Ranking Member

JERRY MCNERNEY, California

PAUL TONKO, New York

ELIOT L. ENGEL, New York

GENE GREEN, Texas

LOIS CAPPS, California

MICHAEL F. DOYLE, Pennsylvania

KATHY CASTOR, Florida

JOHN P. SARBANES, Maryland

PETER WELCH, Vermont

JOHN A. YARMUTH, Kentucky

DAVID LOEBSACK, Iowa

FRANK PALLONE, JR., New Jersey (*ex officio*)

CONTENTS

	Page
Hon. Ed Whitfield, a Representative in Congress from the Commonwealth of Kentucky, opening statement	1
Prepared statement	16
Hon. Jerry McNerney, a Representative in Congress from the State of California, opening statement	17
Hon. Bill Johnson, a Representative in Congress from the State of Ohio, opening statement	18
Hon. Frank Pallone, Jr., a Representative in Congress from the State of New Jersey, opening statement	20
Prepared statement	21
Hon. Fred Upton, a Representative in Congress from the State of Michigan, prepared statement	96

WITNESSES

Keith J. Rothfus, A Representative in Congress from the Commonwealth of Pennsylvania	22
Prepared statement	25
Vincent Brisini, Director, Environmental Affairs for Olympus Power	29
Prepared statement ¹	32
Dennis Beck, Chairman, Western Pennsylvania Coalition for Abandoned Mine Reclamation	38
Prepared statement	40
John Walke, Senior Attorney and Clean Air Director, Natural Resources Defense Council	46
Prepared statement	48
Davis Henry, President and CEO, Henry Brick	61
Prepared statement ²	64
Creighton “Butch” McAvoy, President, McAvoy Brick Company	68
Prepared statement	71

SUBMITTED MATERIAL

H.R. 3797	3
Blocking Regulatory Interference from Closing Kilns (BRICK) Act	13
Statement of the United States Environmental Protection Agency	98

¹ The addendum to Mr. Brisini’s testimony is available at: <http://docs.house.gov/meetings/if/if03/20160203/104366/hhrg-114-if03-wstate-brisiniv-20160203.pdf>.

² The addendum to Mr. Henry’s testimony is available at: <http://docs.house.gov/meetings/if/if03/20160203/104366/hhrg-114-if03-wstate-henryd-20160203-u2.pdf>.]

**H.R. 3797, THE SATISFYING ENERGY NEEDS
AND SAVING THE ENVIRONMENT (SENSE)
ACT; AND H.R. ———, THE BLOCKING REGU-
LATORY INTERFERENCE FROM CLOSING
KILNS (BRICK) ACT**

WEDNESDAY, FEBRUARY 3, 2016

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND POWER,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:04 a.m., in room 2123 Rayburn House Office Building, Hon. Ed Whitfield (chairman of the subcommittee) presiding.

Members present: Representatives Whitfield, Shimkus, Latta, Harper, McKinley, Johnson, Long, Ellmers, Flores, Mullin, McNerney, Engel, Green, Doyle, Welch, Loeb sack, and Pallone (ex officio).

Staff present: Will Batson, Legislative Clerk, E&P, E&E; Allison Busbee, Policy Coordinator, Energy and Power; Rebecca Card, Assistant Press Secretary; A.T. Johnston, Senior Policy Advisor; Ben Lieberman, Counsel, Energy & Power; Mary Neumayr, Senior Energy Counsel; Annelise Rickert; Legislative Associate; Dan Schneider, Press Secretary; Christine Brennan, Minority Press Secretary; Jeff Carroll, Minority Staff Director; Jean Fruci, Minority Energy and Environment Policy Advisor; Caitlin Haberman, Minority Professional Staff Member; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; Josh Lewis, Minority EPA Detailee; and Alexander Ratner, Minority Policy Analyst.

OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY

Mr. WHITFIELD. I would like to call the hearing to order this morning and I would like to recognize myself for 5 minutes for an opening statement.

The Obama EPA has been particularly aggressive in issuing regulations and, of course, many of those regulations are beneficial. But at the same time, many of those regulations create job loss and obstacles to economic growth. And today we are going to be discussing two bills making targeted changes to EPA rules in order to avoid what we consider are adverse consequences: H.R. 3797, the Satisfying Energy Needs and Saving the Environment Act, referred to as the SENSE Act, and H.R., which I guess we don't have a

number for this yet, the Blocking Regulatory Interference from Closing Kilns, or BRICK Act.

Now, the SENSE Act was introduced by Rep. Keith Rothfus of Pennsylvania, who is with us today, and his bill addresses an issue of great concern in western Pennsylvania and other coal-mining regions around the country and that is the recycling of massive piles of coal refuse that were generated many years ago and continue to be located in many of these communities. Coal refuse is the above-ground waste product of coal mining found near many abandoned mine sites. Left unaddressed, coal refuse contributes to a number of environmental challenges such as acid mine drainage that may impact rivers and streams. Coal refuse from these abandoned mines can also spontaneously combust, creating fires that are difficult sometimes to put out.

Fortunately, there is an economically viable solution that benefits the environment while reclaiming acres of land and disposing of the coal refuse. Specialized power plants have been developed that can use coal refuse to produce electricity, and they are doing that today. These coal refuse-to-energy facilities not only reduce the volumes of coal refuse, but the resultant ash is environmentally beneficial and can then be used for site remediation.

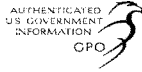
However, the continued operation of these plants is in jeopardy by the EPA's Cross-State Air Pollution Rule and the agency's Mercury and Air Toxics Standard, also commonly referred to as Utility MACT. As written, these two EPA rules may cause the shutdown of coal refuse-to-energy plants and put a stop to the only economically proven means of addressing this issue. Members of this subcommittee have raised concerns with EPA regulators about the potential impact of the rules. I know that Congressman Rothfus has spent a great deal of time on it. And so we have been talking to EPA, asking for their assistance and, unfortunately, to this point they have simply ignored everything that we said.

Now, the BRICK Act, as the name implies, addresses a BRICK industry regulation and I would like to thank Bill Johnson for his work on this draft bill. Last September, EPA finalized its national emission standards for hazardous air pollutants for brick and structural clay products manufacturing, commonly called Brick MACT. This rule contains ultra stringent new emission targets, and in fact it used as a baseline EPA's 2003 Brick MACT rule which already reduced industry emissions by 95 percent, according to a recent report. It should be noted that those 2003 Brick MACT standards were vacated by a federal court in 2007. But as in so many EPA regulations where suits are filed and the complainants win, the money is already spent.

The effort to comply has already been taken and so it is too late for a practical relief for these people, and that's precisely where the brick industry is finding itself today.

So I look forward to additional discussion. We have two panels of witnesses today about these practical common sense bills and hopefully we can provide some relief to these industries as they try to protect jobs, help economic growth and to expand their industries.

[H.R. 3797 follows:]



114TH CONGRESS
1ST SESSION

H. R. 3797

To establish the bases by which the Administrator of the Environmental Protection Agency shall issue, implement, and enforce certain emission limitations and allocations for existing electric utility steam generating units that convert coal refuse into energy.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 22, 2015

Mr. ROTHFUS (for himself, Mr. BARLETTA, Mr. THOMPSON of Pennsylvania, and Mr. KELLY of Pennsylvania) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To establish the bases by which the Administrator of the Environmental Protection Agency shall issue, implement, and enforce certain emission limitations and allocations for existing electric utility steam generating units that convert coal refuse into energy.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Satisfying Energy
5 Needs and Saving the Environment Act” or the “SENSE
6 Act”.

1 **SEC. 2. STANDARDS FOR COAL REFUSE POWER PLANTS.**

2 (a) DEFINITIONS.—In this Act:

3 (1) ADMINISTRATOR.—The term “Adminis-
4 trator” means the Administrator of the Environ-
5 mental Protection Agency.

6 (2) BOILER OPERATING DAY.—The term “boiler
7 operating day” has the meaning given such term in
8 section 63.10042 of title 40, Code of Federal Regu-
9 lations, or any successor regulation.

10 (3) COAL REFUSE.—The term “coal refuse”
11 means any byproduct of coal mining, physical coal
12 cleaning, or coal preparation operation that contains
13 coal, matrix material, clay, and other organic and in-
14 organic material.

15 (4) COAL REFUSE ELECTRIC UTILITY STEAM
16 GENERATING UNIT.—The term “coal refuse electric
17 utility steam generating unit” means an electric util-
18 ity steam generating unit that—

19 (A) is in operation as of the date of enact-
20 ment of this Act;

21 (B) uses fluidized bed combustion tech-
22 nology to convert coal refuse into energy; and

23 (C) uses coal refuse as at least 75 percent
24 of the annual fuel consumed, by heat input, of
25 the unit.

1 (5) COAL REFUSE-FIRED FACILITY.—The term
2 “coal refuse-fired facility” means all coal refuse elec-
3 tric utility steam generating units that are—

4 (A) located on one or more contiguous or
5 adjacent properties;

6 (B) specified within the same Major Group
7 (2-digit code), as described in the Standard In-
8 dustrial Classification Manual (1987); and

9 (C) under common control of the same
10 person (or persons under common control).

11 (6) CROSS-STATE AIR POLLUTION RULE.—The
12 terms “Cross-State Air Pollution Rule” and
13 “CSAPR” mean the regulatory program promul-
14 gated by the Administrator to address the interstate
15 transport of air pollution in parts 51, 52, and 97 of
16 title 40, Code of Federal Regulations, including any
17 subsequent or successor regulation.

18 (7) ELECTRIC UTILITY STEAM GENERATING
19 UNIT.—The term “electric utility steam generating
20 unit” means either or both—

21 (A) an electric utility steam generating
22 unit, as such term is defined in section
23 63.10042 of title 40, Code of Federal Regula-
24 tions, or any successor regulation; or

1 (B) an electricity generating unit or elec-
2 tric generating unit, as such terms are used in
3 CSAPR.

4 (8) PHASE I.—The term “Phase I” means, with
5 respect to CSAPR, the initial compliance period
6 under CSAPR, identified for the 2015 and 2016 an-
7 nual compliance periods.

8 (b) APPLICATION OF CSAPR TO CERTAIN COAL
9 REFUSE ELECTRIC UTILITY STEAM GENERATING
10 UNITS.—

11 (1) COAL REFUSE ELECTRIC UTILITY STEAM
12 GENERATING UNITS COMBUSTING BITUMINOUS COAL
13 REFUSE.—

14 (A) APPLICABILITY.—This paragraph ap-
15 plies with respect to any coal refuse electric
16 utility steam generating unit that—

17 (i) combusts coal refuse derived from
18 the mining and processing of bituminous
19 coal; and

20 (ii) is subject to sulfur dioxide allow-
21 ance surrender provisions pursuant to
22 CSAPR.

23 (B) CONTINUED APPLICABILITY OF PHASE
24 I ALLOWANCE ALLOCATIONS.—In carrying out
25 CSAPR, the Administrator shall provide that,

1 for any compliance period, the allocation
2 (whether through a Federal implementation
3 plan or State implementation plan) of sulfur di-
4 oxide allowances for a coal refuse electric utility
5 steam generating unit described in subpara-
6 graph (A) is equivalent to the allocation of the
7 unit-specific sulfur dioxide allowance allocation
8 identified for such unit for Phase I, as ref-
9 erenced in the notice entitled “Availability of
10 Data on Allocations of Cross-State Air Pollu-
11 tion Rule Allowances to Existing Electricity
12 Generating Units” (79 Fed. Reg. 71674 (De-
13 cember 3, 2014)).

14 (C) RULES FOR ALLOWANCE ALLOCA-
15 TIONS.—For any compliance period under
16 CSAPR that commences on or after January 1,
17 2017, any sulfur dioxide allowance allocation
18 provided by the Administrator to a coal refuse
19 electric utility steam generating unit described
20 in subparagraph (A)—

21 (i) shall not be transferable for use by
22 any other source not located at the same
23 coal refuse-fired facility as the relevant
24 coal refuse electric utility steam generating
25 unit;

1 (ii) may be transferable for use by an-
2 other source located at the same coal
3 refuse-fired facility as the relevant coal
4 refuse electric utility steam generating
5 unit;

6 (iii) may be banked for application to
7 compliance obligations in future compli-
8 ance periods under CSAPR; and

9 (iv) shall be surrendered upon the
10 permanent cessation of operation of such
11 coal refuse electric utility steam generating
12 unit.

13 (2) OTHER SOURCES.—

14 (A) NO INCREASE IN OVERALL STATE
15 BUDGET OF SULFUR DIOXIDE ALLOWANCE AL-
16 LOCATIONS.—For purposes of paragraph (1),
17 the Administrator may not, for any compliance
18 period under CSAPR, increase the total budget
19 of sulfur dioxide allowance allocations for a
20 State in which a unit described in paragraph
21 (1)(A) is located.

22 (B) COMPLIANCE PERIODS 2017 THROUGH
23 2020.—For any compliance period under
24 CSAPR that commences on or after January 1,
25 2017, but before December 31, 2020, the Ad-

1 ministrator shall carry out subparagraph (A) by
2 proportionally reducing, as necessary, the unit-
3 specific sulfur dioxide allowance allocations
4 from each source that—

5 (i) is located in a State in which a
6 unit described in paragraph (1)(A) is lo-
7 cated;

8 (ii) permanently ceases operation, or
9 converts its primary fuel source from coal
10 to natural gas, prior to the relevant com-
11 pliance period; and

12 (iii) otherwise receives an allocation of
13 sulfur dioxide allowances under CSAPR for
14 such period.

15 (c) EMISSION LIMITATIONS TO ADDRESS HYDROGEN
16 CHLORIDE AND SULFUR DIOXIDE AS HAZARDOUS AIR
17 POLLUTANTS.—

18 (1) APPLICABILITY.—For purposes of regu-
19 lating emissions of hydrogen chloride or sulfur diox-
20 ide from a coal refuse electric utility steam gener-
21 ating unit under section 112 of the Clean Air Act
22 (42 U.S.C. 7412), the Administrator—

23 (A) shall authorize the operator of such
24 unit to elect that such unit comply with ei-
25 ther—

1 (i) an emissions standard for emis-
2 sions of hydrogen chloride that meets the
3 requirements of paragraph (2); or

4 (ii) an emission standard for emis-
5 sions of sulfur dioxide that meets the re-
6 quirements of paragraph (2); and

7 (B) may not require that such unit comply
8 with both an emission standard for emissions of
9 hydrogen chloride and an emission standard for
10 emissions of sulfur dioxide.

11 (2) RULES FOR EMISSION LIMITATIONS.—

12 (A) IN GENERAL.—The Administrator
13 shall require an operator of a coal refuse elec-
14 tric utility steam generating unit to comply, at
15 the election of the operator, with no more than
16 one of the following emission standards:

17 (i) An emission standard for emissions
18 of hydrogen chloride from such unit that is
19 no more stringent than an emission rate of
20 0.002 pounds per million British thermal
21 units of heat input.

22 (ii) An emission standard for emis-
23 sions of hydrogen chloride from such unit
24 that is no more stringent than an emission
25 rate of 0.02 pounds per megawatt-hour.

1 (iii) An emission standard for emis-
2 sions of sulfur dioxide from such unit that
3 is no more stringent than an emission rate
4 of 0.20 pounds per million British thermal
5 units of heat input.

6 (iv) An emission standard for emis-
7 sions of sulfur dioxide from such unit that
8 is no more stringent than an emission rate
9 of 1.5 pounds per megawatt-hour.

10 (v) An emission standard for emis-
11 sions of sulfur dioxide from such unit that
12 is no more stringent than capture and con-
13 trol of 93 percent of sulfur dioxide across
14 the generating unit or group of generating
15 units, as determined by comparing—

16 (I) the expected sulfur dioxide
17 generated from combustion of fuels
18 emissions calculated based upon as-
19 fired fuel samples; to

20 (II) the actual sulfur dioxide
21 emissions as measured by a sulfur di-
22 oxide continuous emission monitoring
23 system.

24 (B) MEASUREMENT.—An emission stand-
25 ard described in subparagraph (A) shall be

1 measured as a 30 boiler operating day rolling
2 average per coal refuse electric utility steam
3 generating unit or group of coal refuse electric
4 utility steam generating units located at a sin-
5 gle coal refuse-fired facility.

○

[Blocking Regulatory Interference from Closing Kilns (BRICK)
Act follows:]

F:\WPB\2016\EC-R\BRICK-CLAY_01.XML

.....
(Original Signature of Member)

114TH CONGRESS
2D SESSION

H. R. _____

To allow for judicial review of any final rule addressing national emission standards for hazardous air pollutants for brick and structural clay products or for clay ceramics manufacturing before requiring compliance with such rule.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To allow for judicial review of any final rule addressing national emission standards for hazardous air pollutants for brick and structural clay products or for clay ceramics manufacturing before requiring compliance with such rule.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Blocking Regulatory
5 Interference from Closing Kilns Act of 2016”.

1 **SEC. 2. EXTENDING COMPLIANCE DATES (PENDING JUDI-**
 2 **CIAL REVIEW) OF RULES ADDRESSING NA-**
 3 **TIONAL EMISSION STANDARDS FOR HAZ-**
 4 **ARDOUS AIR POLLUTANTS FOR BRICK AND**
 5 **STRUCTURAL CLAY PRODUCTS MANUFAC-**
 6 **TURING OR CLAY CERAMICS MANUFAC-**
 7 **TURING.**

8 (a) EXTENSION OF COMPLIANCE DATES.—

9 (1) EXTENSION.—Each compliance date of any
 10 final rule described in subsection (b) is deemed to be
 11 extended by the time period equal to the time period
 12 described in subsection (c).

13 (2) DEFINITION.—In this subsection, the term
 14 “compliance date” means, with respect to any re-
 15 quirement of a final rule described in subsection (b),
 16 the date by which any State, local, or tribal govern-
 17 ment or other person is first required to comply.

18 (b) FINAL RULES DESCRIBED.—A final rule de-
 19 scribed in this subsection is any final rule to address na-
 20 tional emission standards for hazardous air pollutants
 21 (NESHAP) for brick and structural clay products manu-
 22 facturing or clay ceramics manufacturing under section
 23 112 of the Clean Air Act (42 U.S.C. 7412), including—

24 (1) the final rule entitled “NESHAP for Brick
 25 and Structural Clay Products Manufacturing; and

1 NESHAP for Clay Ceramics Manufacturing” pub-
2 lished at 80 Fed. Reg. 65469 (October 26, 2015);

3 (2) the final rule entitled “NESHAP for Brick
4 and Structural Clay Products Manufacturing; and
5 NESHAP for Clay Ceramics Manufacturing: Correc-
6 tion” published at 80 Fed. Reg. 75817 (December
7 4, 2015); and

8 (3) any final rule that succeeds or amends the
9 rule described in paragraph (1) or (2).

10 (c) PERIOD DESCRIBED.—The time period described
11 in this subsection is the period of days that—

12 (1) begins on the date that is 60 days after the
13 day on which notice of promulgation of a final rule
14 described in subsection (b) appears in the Federal
15 Register; and

16 (2) ends on the date on which judgment be-
17 comes final, and no longer subject to further appeal
18 or review, in all actions (including actions that are
19 filed pursuant to section 307 of the Clean Air Act
20 (42 U.S.C. 7607))—

21 (A) that are filed during the 60 days de-
22 scribed in paragraph (1); and

23 (B) that seek review of any aspect of such
24 rule.

[The prepared statement of Mr. Whitfield follows:]

PREPARED STATEMENT OF HON. ED WHITFIELD

The Obama EPA has issued numerous regulations impacting manufacturers and energy producers, and many of us are concerned about their impact on the economy and jobs. In particular, a few of these rules are extremely troubling, such as the ones that may cause more environmental harm than good and those that may force small businesses to shut down. Today, we will discuss two bills making targeted changes to EPA rules in order to avoid these adverse consequences, H.R. 3797, the Satisfying Energy Needs and Saving the Environment (SENSE) Act, and H.R. _____, the Blocking Regulatory Interference from Closing Kilns (BRICK) Act.

The SENSE Act was introduced by Rep. Keith Rothfus of Pennsylvania who we welcome to this subcommittee. His bill addresses an issue of great concern in Western Pennsylvania and other coal-mining regions, and that is the recycling of massive piles of coal refuse that were generated many years ago and continue to be located in many of these communities. Coal refuse is the aboveground waste products of coal mining found near many abandoned mines. Left unaddressed, coal refuse contributes to a number of environmental challenges such as acid mine drainage that may impact rivers and streams. Coal refuse from these abandoned mines can also spontaneously combust, creating massive fires that are difficult to put out.

Fortunately, there is an economically viable solution that benefits the environment while reclaiming acres of land and disposing of the coal refuse. Specialized power plants have been developed that can use coal refuse to produce electricity. These coal refuse-to-energy facilities not only reduce the volumes of coal refuse, but the resultant ash is environmentally beneficial and can then be used for site remediation.

However, the continued operation of these plants is jeopardized by the EPA's Cross State Air Pollution Rule (CSAPR) and the agency's Mercury and Air Toxics Standards (MATS), also commonly referred to as Utility MACT. As written, these two EPA rules may cause the shutdown of coal refuse-to-energy plants and put a stop to the only economically proven means of addressing coal refuse. Members of this subcommittee have raised their concerns with EPA regulators about the potential impact of these rules and on the need to treat coal refuse-to-energy facilities as a separate sub-category, but these concerns were ignored.

The SENSE Act contains limited modifications to these rules as they apply to coal refuse-to-energy plants. Specifically, the bill provides less restrictive sulfur dioxide emissions allocations under the Cross State Air Pollution Rule, and creates an alternative means of compliance under the Mercury and Air Toxics Standards. In neither case would the bill repeal the provisions in these rules nor jeopardize the continued declines in the emissions regulated under them. But they would enable these coal refuse-to-energy facilities to continue operating and providing both electricity and environmental benefits to the communities they serve.

The BRICK Act, as the name implies, addresses a brick industry regulation, and I would like to thank Bill Johnson for his work on this draft bill. Last September, EPA finalized its National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing, commonly called Brick MACT. This rule contains ultra-stringent new emissions targets, and in fact it used as a baseline EPA's 2003 Brick MACT rule which already reduced industry emissions by 95 percent, according to a recent Chamber of Commerce report. It should be noted that those 2003 Brick MACT standards were vacated by a federal court in 2007, but by the time the decision was handed down the industry had already undertaken expensive compliance measures.

We want to make sure that this vulnerable industry does not face the same unfair situation for a second time. Compliance is especially challenging given that the brickmaking industry is dominated by small companies that lack the resources to install the costly new controls that are required. Many operators fear shutdowns and layoffs, and all to ratchet down already-low emissions by a very small amount. That is why the BRICK Act extends the compliance dates for these rules until after all judicial review is completed. This reasonable provision will prevent EPA from again imposing costly requirements that may later be found to be outside the agency's authority.

Both the SENSE Act and the BRICK Act provide specific solutions to specific problems created by EPA rules that directly threaten the continued operation of businesses in these important sectors of our economy. These targeted provisions will be a net plus for the environment as well as the economy and jobs in many small

communities. I urge all my colleagues to support these commonsense measures and I look forward to hearing the testimony from our witnesses today.

Mr. WHITFIELD. With that, at this time I would like to recognize the gentleman from California, Mr. McNerney, for his 5-minute opening statement.

OPENING STATEMENT OF HON. JERRY MCNERNEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MCNERNEY. Well, I thank the chairman and I thank the witness colleague. Today's hearing focuses on a couple of bills, the BRICK Act and the SENSE Act, that are a familiar effort to weaken the Clean Air Act.

Mr. Chairman, well thought out regulations make businesses more competitive and protect American people. These bills echo what we saw, for example, with the Ratepayer Protection Act, a partisan effort to weaken the Clean Air Act.

Addressing air quality is a health and economic issue. Poor air quality can disrupt businesses, individuals, and families who have to live with its consequences. It is irresponsible and morally bankrupt to needlessly delay a rule from taking effect that will improve air quality, especially if the intent is to delay it indefinitely. The bills under consideration simply seek to maintain the status quo. Well, the status quo isn't good enough. Our country can do better than that.

I represent part of the San Joaquin Valley, which is also called the famed Central Valley of California. But, unfortunately, it has some of the worst air quality in the nation. Employees miss work, children miss school days and the elderly are often encouraged to stay inside on certain days. We have seen the air quality improve over the last decade, which I am happy to say I have experienced. But we are still living in poor air. I have seen firsthand the effect of pollution on our communities. Valley air quality is affected from a variety of sources—from China, from in-state and out-of-state vehicles, from drought, as well as from pollutions drifting in from other parts of the state and from other states. That is not to mention unforeseen incidents like the methane leak that has been releasing millions of pounds of methane per day in southern California.

Our region has worked hard and taken steps to help address one of the biggest issues facing the valley. Recent improvements have produced significant economic and health benefits. But there is still an enormous amount of work to be done. Having worked in the private sector and an emerging field, I understand the difficulties that come with raising capital and business targets that are always moving around.

But these advancements take time and investments. Sticking with the status quo is not and will never be a solution. Fossil fuels will remain an important bridge of energy source as our country moves forward to cleaner energy sources. But as we move forward, we should maintain focus on making carbon energy production as clean as possible through technology and effective use of regulation.

The EPA has used the Clean Air Act to improve the lives of millions of Americans and reduce harmful emissions. The Clean Air

Act has worked and we should continue building on this landmark legislation, not slowly dismantle it. And by the way, I suggest that my colleagues embrace carbon sequestration. With that, I would like to recognize my colleague from Pennsylvania, Mr. Doyle.

Mr. DOYLE. I want to thank my friend for yielding time. I also want to thank Congressman Rothfus from my home state for appearing before our committee today and for his work on this important issue. I have seen these coal refuse piles first hand and I have witnessed significant benefit processing waste coal can provide to these sites.

Our State, Pennsylvania, is home to nearly three-quarters of the active coal refuse power plants in the country. There are more than 5,000 coal refuse sites that cover approximately 184,000 acres throughout our state and pose a significant threat to local habitats and communities.

As many of you on this committee know, I'm an all-of-the-above guy when it comes to our energy portfolio and coal refuse power plants provide an additional benefit in that they improve the local environment. I think they are an important part of Pennsylvania's power system and help ensure we are good stewards of our land and water. This bill would certainly help ensure their continued use in years to come. I would note to my colleagues that this bill is also significantly improved from previous versions.

Cleaning up these waste coal piles is a major priority for our state and we need to figure this difficult problem out. However, I also want to ensure that we are protecting our air, not playing favorites when it comes to picking power sources and preserving important regulations in the regulatory process.

I still have some remaining concerns on aspects of these bills. But I want to thank Congressman Rothfus for highlighting the importance of this pressing issue for Pennsylvania that is before our committee today, and I yield back.

Mr. WHITFIELD. The gentleman yields back.

At this time, Mr. Upton is not here so I would like to recognize the gentleman from Ohio, the author of the BRICK Act, Mr. Johnson, for 5 minutes.

**OPENING STATEMENT OF HON. BILL JOHNSON, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO**

Mr. JOHNSON. Well, thank you, Mr. Chairman, for holding this very important hearing today to examine both the legislation that my colleague, Mr. Rothfus, has introduced and the BRICK Act, a discussion draft that addresses the EPA's national emissions standards for the brick and structural clay products manufacturing industry, which was finalized last September 24th of 2015. Simply put, the BRICK Act would allow for the consideration and completion of any judicial review regarding the EPA's emission standards for the brick industry before requiring compliance.

Mr. Chairman, I want to take just a moment to illustrate how the EPA's new regulation will affect the industry and why the BRICK Act is so desperately needed. The majority of U.S. brick plants are small family-owned operations. They are often located in small communities that depend on the plant for good-paying jobs. Whitacre Greer Brick, located in Alliance, Ohio, is just such a com-

pany that fits that description. Whitacre Greer employs 75 people, offers education and training benefits and health insurance to its employees. To comply with the EPA's requirements, Whitacre Greer will be forced to borrow millions of dollars to pay for the required control equipment.

Many brick companies are already struggling to find the capital for plant modernization projects. I can't imagine how difficult it will be for these companies like Whitacre Greer to secure the needed investments to pay for new control equipment—equipment that provides zero return on investment.

Additionally, and this is an important point, the EPA, as you mentioned, Mr. Chairman, finalized a similar rule in 2003 that already required brick companies to spend millions of dollars on control equipment and the industry did that when that rule was implemented. A few years later, a federal court vacated that rule, making that investment useless. Unfortunately, the brick industry couldn't roll back the clock and recover the investment they had made and, worse yet, the EPA's new emission rules used reductions achieved by the vacated rule as the baseline for further emission reduction requirements.

Now, I don't think anybody here would disagree. I see the need to protect public health and the environment. But it is unfair that the agency's new rule does not give the industry credit for the emission reductions that it has already achieved. This lack of consideration in addition to other EPA rule requirements places the industry's very survival in jeopardy.

The brick industry is a part of the American fabric. It is a part of American culture. It has built some of the most iconic buildings and towns in existence today. We must make certain our regulations and laws preserve this industry, not end it. The BRICK Act will help keep this important industry alive.

Unless we want to start constructing buildings out of sticks and straw, we better wise up. We, collectively, all across this country, here in the House, in the Senate, in the federal agencies like the EPA, need to act responsibly on this issue.

And with that, Mr. Chairman, I will look forward to discussing the issue.

Mr. SHIMKUS. Would the gentleman yield? Would the gentleman yield?

Mr. JOHNSON. Yes, I certainly will yield.

Mr. SHIMKUS. Thank you. I just want to take this time to welcome Congressman Rothfus from Pennsylvania and especially on this piece of legislation.

Congressman Doyle mentioned it. I also have a lot of sites that could be recycled. I think Keith proves to be a sound political mind and does due diligence and we are glad you finally get a chance to air this bill before the subcommittee and we want to welcome you.

Likewise to my colleague and friend, Bill Johnson. He's right. The brick industry is really mom and pop businesses that have operated and survived for many years. I would just remind my friends that the biggest damage to the health of our individual citizens is unemployment and no jobs.

And so our fight is to make sure that we can continue to provide good-paying jobs with health care benefits to our citizens before it is too late. With that, I yield back my time.

Mr. WHITFIELD. Gentleman yields back.

At this time, the chair recognizes the gentleman from New Jersey, Mr. Pallone, for 5 minutes.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman.

Today, we are considering two bills that undermine EPA air rules that are instrumental in protecting public health and the environment by reducing mercury and other hazardous air pollutants from power plants and other industrial sources.

Let me start with H.R. 3797, the Satisfying Energy Needs and Saving the Environment Act, or SENSE Act. This bill would revise the mercury and air toxics, or MATS rule, and the cross-state air pollution rule, or CSAPR rule, to allow power plants that burn coal refuse to emit higher levels of sulfur dioxide and hydrogen chloride. Sulfur dioxide is known to cause adverse respiratory impacts and hydrogen chloride is corrosive to eyes and skin and can irritate the respiratory tract.

Supporters of this bill will say that facilities that burn coal refuse are doing a good thing by cleaning up the environment and generating power. But I don't think we are here today to debate that. Instead, we are here to consider whether the facilities that burn coal refuse should be given a free pass on complying with EPA rules to reduce certain air pollutants and I believe that is a very bad idea. Coal refuse plants are no different than other coal plants and therefore should be held to the same emission standards.

Supporters of this bill have also argued that coal refuse plants deserve special treatment when it comes to these air rules. In the context of the MATS rule I would note that the EPA, the courts and the Senate, which considered a coal refuse-related amendment last January, have all reviewed and rejected the argument that they should be given special consideration. In the context of the CSAPR rule, the SENSE Act is unnecessary and I just think bad policy. The current rule uses a phased-in approach to achieve emission reductions where facilities receive emission allowances that decrease over time. The bill would shift a greater percentage of these emission allowances to coal refuse plants. EPA has a plan for how these allowances should be allocated to individual plants. But states also have the ability to submit their own plan for achieving the required emission reductions. What this means is the state, if it chooses, already has the power to give extra allowances to coal refuse plants as this bill would mandate.

Beyond being unnecessary, this provision undermines the CSAPR trading system and creates inequities in the market. The SENSE Act picks winners and losers, tipping the scales in favor of coal refuse plants at the expense of all other plants within a state.

Now, briefly turning to the other bill, the BRICK Act extends compliance deadlines until all legal challenges are resolved by the

courts. If this sounds familiar, that is because it is. We saw a similar provision in H.R. 2042, the Ratepayer Protection Act.

We also had a similar discussion at our hearing on that bill when the witness pointed out that the current judicial process for delaying a rule “has withstood the test of time and ensures the courts will undertake a careful balancing of interests before granting a stay of agency action.” And she further explained that the blanket extension in the discussion draft would “create powerful incentives for frivolous litigation in an effort to stall and avoid compliance.”

I do understand there are special circumstances related to this particular rule. The brick industry has made good faith efforts to work with EPA and to reduce their emissions. However, the litigation delay in the BRICK Act creates a very bad precedent, in my opinion.

The bills we are considering today would undermine protections and set bad legislative precedence going forward and therefore I cannot support either of them, and I yield back.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Thank you Mr. Chairman. Today, we are considering two bills that undermine EPA air rules—rules that are instrumental in protecting public health and the environment by reducing mercury and other hazardous air pollutants from power plants and other industrial sources.

Let me start with H.R. 3797, the “Satisfying Energy Needs and Saving the Environment Act (or SENSE Act). This bill would revise the Mercury and Air Toxics or MATS rule and the Cross State Air Pollution Rule or CSAPR rule to allow power plants that burn coal refuse to emit higher levels of sulfur dioxide and hydrogen chloride. Sulfur Dioxide is known to cause adverse respiratory impacts; and hydrogen chloride is corrosive to eyes and skin and can irritate the respiratory tract.

Supporters of this bill will say that facilities that burn coal refuse are doing a good thing by cleaning up the environment and generating power. We’re not here today to debate that. Instead we are here to consider whether facilities that burn coal refuse should be given a free pass on complying with EPA rules to reduce certain air pollutants. I believe that’s a very bad idea—coal refuse plants are no different than other coal plants and, therefore should be held to the same emissions standards.

Supporters of this bill have also argued that coal refuse plants deserve special treatment when it comes to these air rules. In the context of the MATS rule, I would note that EPA, the courts, and the Senate—which considered a coal refuse-related amendment last January—have all reviewed and rejected the argument that they should be given special consideration. In the context of the CSAPR rule, the SENSE Act is unnecessary and just bad policy. The current rule uses a phased-in approach to achieve emissions reductions—where facilities receive emissions allowances that decrease over time. The bill would shift a greater percentage of these emissions allowances to coal refuse plants. EPA has a plan for how those allowances should be allocated to individual plants, but states also have the ability to submit their own plan for achieving the required emissions reductions. What this means is a state—if it chooses—already has the power to give extra allowances to coal refuse plants as this bill would mandate.

Beyond being unnecessary, this provision undermines the CSAPR trading system and creates inequities in the market. The SENSE Act picks winners and losers, tipping the scales in favor of coal refuse plants, at the expense of all other plants within a state.

Briefly turning to the other bill, the BRICK Act extends compliance deadlines until all legal challenges are resolved by the courts. If this sounds familiar, that’s because it is: we saw a similar provision in H.R. 2042, the Ratepayer Protection Act.

We also had a similar discussion at our hearing on that bill, when a witness pointed out that the current judicial process for delaying a rule “has withstood the test of time, and ensures that courts will undertake a careful balancing of interests before granting a stay of agency action,” and she further explained that the blanket

extension in the discussion draft would “create powerful incentives for frivolous litigation in an effort to stall and avoid compliance.”

I do understand there are special circumstances related to this particular rule. The brick industry has made good faith efforts to work with EPA and to reduce their emissions. However, the litigation delay in the BRICK Act creates a very bad precedent. I believe this issue can and should be resolved by the courts.

The bills we are considering today would undermine protections and set bad legislative precedents going forward, and therefore I cannot support either of them.

Thank you.

Mr. WHITFIELD. Gentleman yields back and that concludes the opening statements. Like our friend from Illinois, I also want to welcome Keith Rothfus, a member of Congress from the Commonwealth of Pennsylvania, with us today.

He is the author of the SENSE Act and has been—I know we have had many discussions about it. I know he has been talking to EPA about it and had discussions with other groups as well.

So welcome, Congressman Rothfus, and you are recognized for a 5-minute opening statement.

**STATEMENT OF HON. KEITH J. ROTHFUS, A REPRESENTATIVE
IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA**

Mr. ROTHFUS. Thank you, Mr. Chairman, and thank you for—

Mr. WHITFIELD. And be sure to turn the microphone on.

Mr. ROTHFUS. Thank you, Mr. Chairman, and thank you for holding this hearing today on two vitally important pieces of legislation, the SENSE Act and the BRICK Act. I also want to thank Vincent Brisini, director of environmental affairs at Olympus Power, and Dennis Beck, the chairman of the Western Pennsylvania Coalition for Abandoned Mine Reclamation, for coming to Washington today to provide additional insight on my legislation.

The SENSE Act, which stands for Satisfying Energy Needs and Saving the Environment Act, is a common sense solution that allows innovative coal refuse-to-energy facilities to generate affordable reliable energy and continue their essential environmental remediation work in a responsible manner.

As many of you know, the coal industry has been a central power to Pennsylvania’s economy for many years. Unfortunately, historic mining activity littered Pennsylvania and a few other states with large piles of coal refuse, sometimes called waste coal, which is essentially a mix of lower quality coal, rocks, and dirt that remain after the mining and processing of coal. Before technology was invented to make use of this material, it accumulated in open spaces alongside cities and towns close to schools and neighborhoods and in fields across coal country.

This led to a number of environmental problems that still plague affected communities. These include air pollution, damage to vegetation and wildlife, and water pollution from acid mine drainage. I have been to several of these sites and seen firsthand the environmental danger they pose. Coal refuse piles can catch fire and burn for unacceptably long periods of time, polluting nearby neighborhoods. Runoff from these sites can turn rivers orange and leave them devoid of life. According to Pennsylvania’s environmental regulator, it would cost roughly \$2 billion to clean up this hazard in my state alone.

This is a significant challenge, but is one that Pennsylvanians and others in coal country are prepared to meet. The coal refuse-to-energy industry has been a leader in solving this problem. With advanced technology, this industry has been able to use this previously worthless material to generate affordable and reliable energy. In the process, they have removed over 200 million tons of coal refuse in Pennsylvania alone and remediated many formerly polluted sites. Thanks to the hard work of the dedicated people in this industry, landscapes have been restored, rivers and streams have been brought back to life, and towns across coal country have been relieved of unsafe and unsightly waste coal piles.

It is important to note that private sector leadership on this issue has saved taxpayers millions of dollars in cleanup costs. It has also created hundreds of family-sustaining jobs in areas that have been economically distressed for many years. These jobs and the communities they support are at risk today, unless we stand to defend them.

The work that the coal refuse-to-energy industry has done is remarkable and it represents an environmental success story that should transcend partisan lines. Despite my best efforts to advocate for a compromise, the Environmental Protection Agency has refused to adjust the regulations that threaten to shut down much of the coal refuse-to-energy industry and thus imperil its vital remediation efforts. The intensification of two existing rules—the Mercury and Air Toxic Standards, or MATS rule, and the Cross-State Air Pollution Rule, or CSAPR—is especially concerning.

Though all coal refuse fire-powered generators can meet the mercury standard under MATS—let me reemphasize that—the coal refuse fire-powered generators can meet the mercury standards under MATS, many facilities will be unable to meet the rule’s new hydrogen chloride or sulfur dioxide standards. The SENSE Act provides operators with alternative compliance standards that are strict but achievable.

Similarly, although coal refuse fire-powered generators were provided sufficient sulfur dioxide allocations in phase one of the CSAPR’s implementation, these facilities were allocated insufficient credits in phase two, which is set to begin in 2017. The SENSE Act seeks to provide coal refuse fire-powered plants with the same allocation levels in phase two as in phase one. My bill also contains provisions to ensure that this change does not simply create a profit center for the industry. Credits allocated as a result of the SENSE Act’s implementation must go to covered plants, specifically those that use bituminous coal refuse and they cannot be sold off to other operators.

The SENSE Act represents a common-sense compromise between the legitimate goals of controlling pollutants emitted from coal refuse-to-energy facilities and ensuring that regulations imposed on the industry are fair and allow vital remediation at work to continue. The people who live near coal refuse piles and all the communities downstream of these hazards expect us to find a solution. The industrious men and women at the power plants, on the coal refuse piles and throughout the supply chain are counting on us to protect their livelihoods. We owe it to all of them to pass the SENSE Act.

Again, I thank the committee for holding this important hearing and I welcome any questions that you may have.
[The prepared statement of Mr. Rothfus follows:]

Congressman Keith Rothfus

House Energy and Commerce Committee, Subcommittee on Energy and Power

Legislative Hearing Written Testimony

2123 Rayburn House Office Building, 10:00am, February 3, 2016

Thank you, Mr. Chairman, for holding this hearing today on two vitally-important pieces of legislation: the SENSE Act (H.R. 3797) and the BRICK Act. I also want to thank Vincent Brisini, Director of Environmental Affairs at Olympus Power, and Dennis Beck, the Chairman of the Western Pennsylvania Coalition for Abandoned Mine Reclamation, for coming to Washington today to provide additional insight on my legislation.

The SENSE Act, which stands for the Satisfying Energy Needs and Saving the Environment Act, is a common-sense solution that allows innovative coal refuse-to-energy facilities to generate affordable, reliable energy and continue their essential environmental remediation work in a responsible manner.

As many of you know, the coal industry has been a central part of Pennsylvania's economy for many years. Unfortunately, historic mining activity littered Pennsylvania and a few other states with large piles of coal refuse (sometimes called waste coal), which is essentially a mix of lower quality coal, rocks, and dirt that remain after the mining and processing of coal. Before technology was invented to make use of this material, it accumulated in open spaces alongside cities and towns, close to schools and neighborhoods, and in fields across coal country.

This led to a number of environmental problems that still plague affected communities. These include air pollution, damage to vegetation and wildlife, and water pollution from acid mine drainage. I have been to several of these sites and seen firsthand the environmental danger they pose. Coal refuse piles can catch fire and burn for unacceptably long periods of time, polluting nearby neighborhoods. Runoff from these sites can turn rivers orange and leave them devoid of life. According to Pennsylvania's environmental regulator, it would cost roughly \$2 billion to clean up this hazard in my state alone.

This is a significant challenge, but it is one that Pennsylvanians and others in coal country are prepared to meet. The coal refuse-to-energy industry has been a leader on solving this problem. With advanced technology, this industry has been able to use this previously worthless material to generate affordable and reliable energy. In the process, they have removed over 200 million tons of coal refuse in Pennsylvania alone and remediated many formerly-polluted sites. Thanks to the hard work of the dedicated people in this industry, landscapes have been restored, rivers and streams have been brought back to life, and towns across coal country have been relieved of unsafe and unsightly waste coal piles.

And it is important to note that private sector leadership on this issue has saved taxpayers millions of dollars in cleanup costs. It has also created hundreds of family-sustaining jobs in areas that have been economically distressed for many years. These jobs and the communities they support are at risk today, unless we stand up to defend them.

The work that the coal refuse-to-energy industry has done is remarkable, and it represents an environmental success story that should transcend partisan lines. Despite my best efforts to advocate for a compromise, the Environmental Protection Agency (EPA) has

refused to adjust the regulations that threaten to shut down much of the coal refuse-to-energy industry, and thus imperil its vital remediation efforts. The intensification of two existing rules, the Mercury and Air Toxics Standards (MATS) Rule and the Cross-State Air Pollution Rule (CSAPR), is especially concerning.

Though all coal-refuse fired power generators can meet the mercury standard under MATS, many facilities will be unable to meet the rule's new hydrogen chloride (HCl) or sulfur dioxide (SO₂) standards. The SENSE Act provides operators with alternative compliance standards that are strict but achievable.

Similarly, although coal-refuse fired power generators were provided sufficient sulfur dioxide allocations in Phase I of CSAPR's implementation, these facilities were allocated insufficient credits in Phase II, which is set to begin in 2017. The SENSE Act seeks to provide coal-refuse fired power generators with the same allocations levels in Phase II as in Phase I. My bill also contains provisions to ensure that this change does not simply create a profit center for the industry. Credits allocated as a result of the SENSE Act's implementation must go to covered plants, specifically those that use bituminous coal refuse, and they cannot be sold off to other operators.

The SENSE Act represents a common-sense compromise between the legitimate goals of controlling pollutants emitted from coal-refuse-to-energy facilities and ensuring that regulations imposed on the industry are fair and allow vital remediation work to continue. The people who live near coal refuse piles and all of the communities downstream of these hazards expect us to find a solution. The industrious men and women at the power plants,

on the coal refuse piles, and throughout the supply chain are counting on us to protect their livelihoods. We owe it to all of them to pass the SENSE Act.

Again, I thank the Committee for holding this important hearing, and I welcome any questions that you might have.

Mr. WHITFIELD. Well, Congressman Rothfus, thank you very much for being with us today, and as much as we would like to ask you questions we are going to dismiss you because we have another panel and we are going to be asking them a lot of questions.

But I want to thank you again for your leadership and bringing this to our attention and we all look forward to working with you to try to move this legislation to provide some assistance. I thank you very much.

Mr. ROTHFUS. Thank you, Chairman.

Mr. WHITFIELD. Thank you.

Now, at this time I would like to call up the witnesses on the second panel.

We have five of them. We have Mr. Davis Henry, who is the president and CEO of Henry Brick. We have Mr. Creighton McAvoy, who is president of McAvoy Brick Company.

We have Mr. Vincent Brisini, who is the director of environment affairs for Olympus Power and we have Mr. Dennis Beck, chairman of the Western Pennsylvania Coalition for Abandoned Mine Reclamation, and we have Mr. John Walke, who is senior attorney and clean air director at the Natural Resources Defense Council.

So if you all would come forward and have a seat. I want to thank all of you for joining us this morning to discuss these two pieces of legislation.

We know that all of you have your expertise and we, as a committee, look forward to learning more about both of these bills and the impacts that they might have.

So, Mr. Brisini, you will be first and so everyone make sure their microphones are on when you do speak so that our transcriber here can get everything down.

But, Mr. Brisini, you are now recognized for five minutes for your opening statement.

STATEMENTS OF VINCENT BRISINI, DIRECTOR, ENVIRONMENTAL AFFAIRS FOR OLYMPUS POWER; DENNIS BECK, CHAIRMAN, WESTERN PENNSYLVANIA COALITION FOR ABANDONED MINE RECLAMATION; JOHN WALKE, SENIOR ATTORNEY AND CLEAN AIR DIRECTOR, NATURAL RESOURCES DEFENSE COUNCIL; DAVIS HENRY, PRESIDENT AND CEO, HENRY BRICK; CREIGHTON "BUTCH" MCAVOY, PRESIDENT, MCAVOY BRICK COMPANY

STATEMENT OF VINCENT BRISINI

Mr. BRISINI. Good morning. I would like to thank the chair and the committee for holding this hearing on the SENSE Act.

My name is Vince Brisini and I am the director of environmental affairs for Olympus Power. Today, I am testifying on behalf of ARIPPA, the trade association of the coal refuse-to-energy industry.

ARIPPA members' facilities remove and convert coal refuse from historic mining activities into environmentally beneficial electricity. In fact, our electricity is recognized in the Pennsylvania Alternative Energy Portfolio Standards Act. Coal refuse is a material that has been left behind by historic coal mining activities. This includes the mining and the processes which separated the coal from rock and other carbonaceous material. The picture on the screen shows a

coal refuse pile on the left and on the right the mine acid drainage that can emanate from these piles. If you look at the coal refuse pile picture you can see the mine acid drainage-polluted stream on the right and at the bottom of the coal refuse pile. The pink areas on the pile are evidence that this pile has previously burned. Where I come from, that material is called red dog.

The next likely question is how much coal refuse is out there. No one really knows. But it is estimated to be about 2 billion cubic yards in Pennsylvania alone and that is split about evenly between the bituminous region in the western part of the state and the anthracite region in the eastern part of the state. This map shows the abandoned mine lands and the location of the coal refuse-to-energy plants in Pennsylvania. It also shows the watersheds impacted by mining-affected lands including coal refuse piles.

Everyone downstream of mining-affected lands is impacted by the surface water pollution from these areas. The coal refuse-to-energy process consists of three basic steps. The coal refuse is screened and removed from the site and then hauled to the coal refuse-to-energy plant. The coal refuse is then burned with limestone in a fluidized bed combustor boiler to make steam to produce electricity and that results in ash that meets the criteria for beneficial use in Pennsylvania and that ash is returned to the mining-affected lands and used to remediate and reclaim those areas.

The coal refuse-to-energy process is the only process that permanently addresses the problems associated with coal refuse. Some key industry metrics in Pennsylvania are 1,500 megawatts of electric generating capacity, 11 million tons of coal refuse removed annually for fuel, over 205 million tons of coal refuse used so far for fuel, thousands of acres of land remediated and reclaimed, hundreds of miles of streams improved by elimination of acid mine drainage, 1,200 direct jobs with a payroll in excess of \$84 million per year, 4,000 indirect jobs for project management, engineering, operations, transportation, logistics and skilled trades, property tax revenues to support local schools and communities and over \$10 million per year of business per facility into their local economy—collectively, \$150 million per year into Pennsylvania's economy. The regulatory issues being addressed by the SENSE Act are the Cross-State Air Pollution Rule and the Mercury and Air Toxic Standards.

While ARIPPA has engaged in both verbal and written communications with EPA regarding the issues associated with coal refuse-fired boilers, EPA has failed to recognize the technical differences between coal-fired and coal-fired refuse boilers and the unique multimedia benefits the coal refuse-fired boilers provide to Pennsylvania. The SENSE Act, on the other hand, provides for very targeted appropriate achievable emission control requirements for certain of these units. Specifically, under the cross-state air pollution rule the SENSE Act continues phase one sulfur dioxide allowance allocations to existing bituminous coal refuse-fired units only. But it preserves EPA's sulfur dioxide emissions budget by re-allocating a percentage of allowances from retired units in two plants that were converted from coal to natural gas. However, it does not allow the transfer of these sulfur dioxide allowances to other units and upon retirement any banked sulfur dioxide allow-

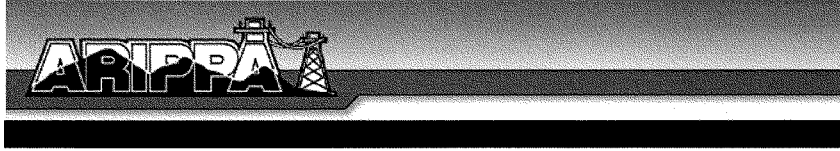
ances allocated under the SENSE Act must be surrendered. These caveats prevent an economic windfall to these bituminous coal refuse-fired units and most likely they result in less sulfur dioxide being emitted into the environment.

In the case of the Mercury and Air Toxic Standards, the SENSE Act adds an additional performance-based standard of 93 percent sulfur dioxide removal to the current acid gas standards for demonstration of compliance. This again provides for the necessary relief for the continued operation of the bituminous coal refuse-fired plants.

The SENSE Act is a reasonable and targeted effort to address the errors that EPA has made in CSAPR and MATS and is very important to ensuring that these coal refuse-fired facilities remain able to conduct their business of reclaiming and recovering these mining-affected lands and providing high quality family-sustaining jobs in the communities in which these facilities are located.

ARIPPA would like to thank Rep. Rothfus and we urge you to support the SENSE Act and its passage in this session of the U.S. House of Representatives.

[The prepared statement of Mr. Brisini follows:]



**Testimony of ARIPPA
before the
House Committee on Energy and Commerce,
Subcommittee on Energy and Power
in Support of H.R. 3797 (the SENSE Act)
February 3, 2016**

Mr. Chairman, Members of the Committee:

Good morning. On behalf of ARIPPA, I would like to thank the Chair and Committee for holding this hearing today on the SENSE Act (H.R. 3797).

My name is Vincent Brisini and I serve as Director of Environmental Affairs for Olympus Power, LLC. Today, I am testifying on behalf of ARIPPA, the trade association representing the coal refuse energy industry. By way of background, and in terms of my perspective on the issues before you today, I have 37+ years of experience in air resources management, in both public service and the private sector. From 2011 to 2015, I served as Deputy Secretary for Waste, Air, Radiation, and Remediation in the Pennsylvania Department of Environmental Protection; and prior to that worked for 33 years as an air quality and environmental manager in the electric generation sector, principally in Pennsylvania.

ARIPPA is the trade association of a very special and unique group of electricity generation facilities which simultaneously serve as environmental remediation facilities. What makes the ARIPPA member facilities special is that we remove unsightly and polluting coal refuse piles from the environment, use that coal refuse as the primary fuel in producing alternative electrical energy and then remediate and reclaim these and other mining affected lands with the resulting beneficial use ash. The

coal refuse to energy process is invaluable because it permanently eliminates the substantial and harmful impacts to air, water and other environmental media, as well as the safety and health impacts, of coal refuse piles. ARIPPA member facilities are located in or near the anthracite or bituminous coal regions of the United States. In the Pennsylvania-West Virginia region, ARIPPA member plants generate approximately 10% of the total electricity produced. The vast majority of these coal refuse to energy facilities are located in Pennsylvania. The attached **ARIPPA Map** of coal refuse-energy facilities demonstrates how these coal refuse-energy facilities are co-located within the abandoned mine lands in Pennsylvania and ideally situated to remediate the environmental harm caused by the coal refuse piles to the numerous watersheds that carry acid mine drainage flowing south and west to the Mississippi River basin and south and east to the Chesapeake Bay.

As noted in the Pennsylvania Department of Environmental Protection's Citizens Advisory Council's 2015 Transition Report, Pennsylvania faces a cost to recover abandoned mine lands of approximately \$16.1 billion. Of that amount, reclaiming coal refuse piles alone represents a burden of approximately \$2 billion or more in Pennsylvania alone. These types of costs can be expected for other coal producing states in the eastern portion of the United States as well.

Because of erroneous assumptions in certain federal environmental regulations, coal refuse-fired power plants are threatened and may lose the ability to continue to provide these publicly-important environmental, safety and health benefits. This is especially true for those coal refuse-fired electric generating units that operate in wholesale electric markets.

Importantly, the coal refuse-fired facilities located in Pennsylvania:

- Include 1500 MW of electrical generation capacity
- Remove and use as fuel 11 million tons of coal refuse annually
- Have used over 205 million tons of coal refuse for fuel, to date

- Have remediated and reclaimed thousands of acres of PA mining affected lands
- Have eliminated acid mine drainage and improved hundreds of miles of PA streams
- Provide over 1200 direct jobs with payrolls in excess of \$84 million per year
- Provide over 4000 indirect jobs in project management, engineering, operations, transportation, logistics and skilled trades
- Provide property tax revenues to support local schools and communities, and;
- Provide over \$10 million per year of business per facility into their local economy – collectively, over \$150 million per year into PA's economy

H.R. 3797, the proposed “Satisfying Energy Needs and Saving the Environment Act” or “SENSE Act,” seeks to address the sulfur dioxide (SO₂) allowance allocation errors contained in the Cross-State Air Pollution Rule (CSAPR) and the erroneous assumptions in the Mercury and Air Toxics Standards (MATS) rulemaking with respect to these facilities. Without the SENSE Act, vastly more local and state taxpayer dollars will be required to reclaim the areas blighted by coal refuse and to address the associated environmental, health and safety problems – money that is not available in our states and communities. Federal funding for abandoned mine reclamation is already drying up due to the greatly reduced amount of coal that is being mined, and state and local budgets are simply unable to tackle this daunting challenge. Absent the SENSE Act, the end result would be the death of a private solution to a public problem and the preservation of the coal refuse piles and the continuation of health, safety and environmental harm associated with these sites!

Cross-State Air Pollution Rule (CSAPR) - Sulfur Dioxide (SO₂) Allowances

In Phase 2 of CSAPR, sulfur dioxide allowance allocations to electric generating units that burn coal refuse from the historic mining and processing of bituminous coal are reduced to levels that cannot

be achieved by these coal refuse-fired units. Absent the ability to economically decide whether to control or purchase allowances from other units, a seller's market for more expensive SO₂ allowances will likely develop which could result in these coal-refuse fired units becoming unable to continue to operate economically.

The SENSE Act mandates that in Phase 2 of CSAPR or in any future revised emissions budget under CSAPR, the bituminous coal refuse-fired electric generating units only be allocated SO₂ allowances at the level provided in Phase 1 of CSAPR. This will ensure that these units aren't unnecessarily forced into retirement because of this error.

To assure that the Phase 2 annual sulfur dioxide emissions budget that has been established by EPA is not compromised, the SENSE Act provides that the Administrator must "re-allocate" sulfur dioxide allowances from the allowance allocations to electric generating units which have been or will be permanently retired or fully converted to burn only natural gas. This will result in a proportional reduction in sulfur dioxide allowance allocations to those units consistent with the number of allowances needed for the re-allocation specified in the SENSE Act.

At the same time, The SENSE Act includes provisions that prevent bituminous coal refuse fired plant owners receiving these CSAPR emission allowances from gaining an economic windfall. It prohibits qualifying plants from transferring any unused CSAPR allowances to other facilities; and, while allowing unused CSAPR allowances to be "banked" for future compliance periods, it requires the surrender of such allowances if a unit permanently retires or switches to natural gas.

Mercury and Air Toxics Standards (MATS)

Although we anticipate that all coal refuse-fired plants can meet the mercury standard under MATS, most of the bituminous coal refuse-facilities cannot meet the rule's standards for hydrogen chloride

(HCl) or its surrogate sulfur dioxide (SO₂). The problem meeting the SO₂ limits arises from the high variations in sulfur content between anthracite and bituminous coal refuse fuels. The SENSE Act addresses this oversight in the regulation by establishing an additional alternative compliance option for coal refuse facilities burning high sulfur coal refuse tied to the removal and control of SO₂. Absent this provision, all but one (which burns low sulfur bituminous coal refuse) of the existing bituminous coal refuse generating plants will be non-compliant and forced to shutter their plants. Along with the closure of these plants would be the loss of the multimedia environmental benefits that the plants provide by combining the generation of energy with the removal of coal piles and restoration of land and water resources.

To ensure the continuation of the multi-environmental benefits that the coal refuse fired plants provide through the continued removal, remediation and reclamation of coal refuse piles, the SENSE Act legislation mandates that an alternative, performance based standard be provided for these units to demonstrate compliance with MATS. Specifically, under the SENSE Act, these units would be able to demonstrate compliance with the MATS acid gas requirement by demonstrating a 93% removal of potential sulfur dioxide emissions based on as-fired fuel sampling and continuous emissions monitoring systems measurements. This performance level is consistent with the concepts established by EPA's New Source Performance Standards (NSPS) for SO₂ emissions for new coal refuse plants by providing a similar standard for existing coal refuse units.

This alternative standard must be demonstrated on the same boiler operating day basis as the other acid gas standards in MATS.

Conclusion

The SENSE Act is a reasonable, and well-targeted effort to address the errors that EPA has made in CSAPR and the MATS rule, and is a very important part of ensuring that coal refuse-fired facilities

remain able to conduct their business of reclaiming and recovering these mining affected lands and providing high quality family sustaining jobs in the communities in which these facilities are located. ARIPPA urges you to support the SENSE Act and its passage in this session of the US House of Representatives.

As part of my testimony, and for your records, I am providing to you certain white papers prepared by ARIPPA that more clearly describe the problems associated with Coal Refuse sites (**Annex A.**) and the impacts of the finalized CSAPR (**Annex B.**) and MATS (**Annex C.**) rules on the coal refuse-fired industry.

Thank you again for the opportunity to testify today.

Attachments:

ARIPPA Map with PA Plants, MGW & Tons Per Year

Annex A. ARIPPA Coal Refuse Whitepaper with Photos 10_05_15

Annex B. ARIPPA CSAPR Whitepaper 9_24_15 (with logo)

Annex C. ARIPPA MATS Whitepaper 9_24_15 (With Logo)

[The addendum to Mr. Brisini's testimony has been retained in committee files and can be found at: <http://docs.house.gov/meetings/if/if03/20160203/104366/hhrg-114-if03-wstate-brisiniv-20160203.pdf>.]

Mr. WHITFIELD. Thank you very much, Mr. Brisini.
And Mr. Beck, you are now recognized for 5 minutes.

STATEMENT OF DENNIS BECK

Mr. BECK. Usually I don't need a microphone but I'll tone myself down today.

Good morning Mr. Chairman, and the rest of the committee members. My name is Dennis Beck. I am president or chairman of the Western Pennsylvania Coalition for Abandoned Mine Reclamation, otherwise known as WPCAMR. We have a sister organization called EPCAMR, which is the eastern Pennsylvania coalition.

The coalition appreciates the opportunity to appear today and share our views and concerns on the effects of the waste coal-to-energy plants in restoring the degraded environment in coal-producing areas, especially in Pennsylvania. I am expressing support for House bill 3797, the SENSE Act, which will help establish the standards for EPA to regulate waste coal-to-energy plants. Our efforts focus on returning abandoned mine lands and waste coal piles to productive use, improving water quality, and reducing hazards to health and safety, thus improving the local economy and enhancing the quality of life.

Today, the runoff from these waste coal piles is polluting our surface and ground water supplies for several miles around the piles with other numerous impacts on our environment. Chemicals such as mercury, selenium, chromium, lead, aluminum, iron, and manganese are seeped out of these coal piles into our water supplies.

Where I live in Cambria County we are at the head waters of the Ohio River and Pennsylvania is also part of the head waters for the Chesapeake Bay. So any pollution that rolls off these coal piles affects everyone downstream. Changes in the PH in these streams destroys aquatic life from the macro invertebrates to fish. None survive in it, from some of the pictures that Vince had shown.

Here is an important part: if left alone, many of these piles will self-ignite. We have got 40 piles in the state of Pennsylvania that are burning at this time. In Lackawanna County, in 2014 Pennsylvania's DEP had to extinguish that pile. It cost them over \$2 million to extinguish the one pile that was burning.

The three coal generation plants in my county have significantly improved and impacted our county. They have burned over 25 million tons of waste coal while supplying electricity to the 280,000 residences. The three plants employ 200 people directly, and indirectly 300 more. They have reclaimed over 525 acres of abandoned mine lands, contributed over \$25 million to the local community since they have been put in place and have won numerous state and environmental and safety awards since 1992.

I just want to talk a little bit about two of the reclamation sites in Cambria County. In Revloc, the Blacklick Creek was a dead stream for several decades. That has been restored. Over 100 acres of land have been restored. The south branch of the Blacklick is now designated as a cold water fishery by the Pennsylvania Fish

and Boat Commission and it is eligible for fish stocking for the local fishermen.

In Washington township, there has been 3.5 million tons of waste coal removed. In its place, there are four ball fields, two and a half miles of walking trails, a community hall, a coal miners monument and a bell tower. It is now a gathering place for the entire community both young and old, improving the vitality of a once dying community. A contractor has also subdivided numerous acres for housing growth in that area.

Another one of these big projects that was undertaken is called the Big Gorilla project in northeast Pennsylvania. It cost DEP \$4.5 million to reclaim those acres, and they estimated if the waste coal plants had not come in to take the waste coal out of there that reclamation cost would have been \$80 million and it cost \$4.5 million to get it cleaned up and restored.

I want to look at net benefits. Several people have talked about the benefits of cleaning these sites up and stuff that we have put on it. I have mentioned a couple of them. Let me just mention what would happen if they are not cleaned up. There is over 5,000 piles of waste coal left in Pennsylvania. There are 40 of them burning at this time. If they are left alone, numerous more are going to self-ignite and what comes off of those piles in the smoke and the steam that come off of there are, again, your mercury, your sulfates, your chlorides, hydrogen sulfide. You have polycyclic organics, which are phenols, coming off of there in that smoke. Furthermore, let me mention this one also.

EPA has indicated from past statements that because of the unique environmental benefits that coal refuse-fired electric generating units provide, these units warrant special consideration so as to prevent the amended NSPS, the new source performance standards, from discouraging the construction of future coal refuse-fired plants in the U.S. and that is in the ARIPPA report that was updated. It is a white paper updated on October 5th of 2015.

We feel it is not equitable and one regulation does not fit all the plants the same. It's an over-burdening and unfair regulation and we support Rep. Rothfus' House bill that will examine the EPA regulation on emissions of these waste coal plants.

We feel that waste coal plants provide a greater benefit to the environment, communities and residents of the unregulated coal mining regions of the past. The amount of pollution removed and streams restored to new life must be considered as greatly beneficial to the people of the United States.

Mr. WHITFIELD. Mr. Beck, excuse me. I have let you go over about a minute and a half so—

Mr. BECK. Three lines. Three lines.

Mr. WHITFIELD. OK.

Mr. BECK. These waste plants are a great example of ingenuity, cutting-edge technology and concern for the environment. The positive impact of the waste coal burning plants include enhancements on land, water, air, living organisms as well as social, cultural, and economic environments.

And thank you, Mr. Chairman.

[The prepared statement of Mr. Beck follows:]

Dennis Beck, President

Western Pennsylvania Coalition for Abandoned Mine Reclamation

Testimony before the House Subcommittee on Energy and Power

February 3, 2016 10:00 am

Good morning Mr. Chairman and members of this committee. My name is Dennis Beck and I am the President of the Western Pennsylvania Coalition for Abandoned Mine Reclamation (WPCAMR). I am appearing today on behalf of WPCAMR.

The Coalition appreciates the opportunity to appear today to share our views and concerns on the effects of the waste coal to energy plants in restoring the degraded environment in coal producing regions, especially in Pennsylvania. I am expressing support for the H.R. Bill 3797 "SENSE Act"; which will set the standards for the EPA to regulate the waste coal to energy plants. WPCAMR has worked with numerous Conservation Districts, local, state, federal governmental agencies, volunteer watershed groups and industry to clean the pollution left behind by the regions former unregulated coal mining practices.

First, I would like to clarify two important points regarding coal burning plants:

- First, there are the large coal-fired power plants that use deep mined coal and surface mined coal to produce energy.
- Second: there are waste coal to energy plants that clean the pollution left behind by the region's former unregulated coal mining practices.

Our efforts focus on number two: that is, returning the abandoned mine lands and waste coal piles to productive use, improving water quality and reducing hazards to health and safety, thus improving the local economy and enhancing the quality of life.

Today runoff from these waste coal piles is polluting our surface and groundwater supplies for several miles around the piles with numerous impacts on our environment:

- chemicals, such as mercury, selenium, chromium, iron, manganese, aluminum, arsenic and others have leaked into our water supply.
- changes in pH to levels destroy aquatic life from macro-invertebrates to fish. None can survive.
- If left alone, many of these piles have and will self-ignite. One pile in Lackawanna County in PA cost PA DEP over \$2M to extinguish in 2014. These piles remain as a costly public safety and health hazard.

The 3 Co-Generation plants in my county (*waste coal burning*), have significantly impacted our county: They have:

- burned over 25 million tons of waste coal, supplying electricity to 280,000 residences.
- directly employ 200 people and indirectly 300 more county residents
- reclaimed over 525 acres of abandoned mine lands
- contributed over \$25M to the local communities
- have all won numerous State and National Environmental and Safety awards since 1992.

I would like to describe two reclamation projects that are taking place in Cambria County. (1) Lilly, PA (Washington Twp), and (2) Revloc, PA.

In Revloc (Cambria County) the Blacklick Creek was a dead stream for several decades. Since it has been restored, over 100 acres have been returned to productive use. Runoff pollution has been reduced to the South branch of Blacklick creek and it is now designated as a Cold Water Fishery by the PA Fish and Boat Commission. The area is also now subdivided for housing.

In Washington Twp (Cambria County), 3.5M tons of waste coal have been removed and in its place are now 4 ball fields, 2.5 miles of walking trails, a community hall, a Coal Miners' monument, and a bell tower. It is now a gathering place for the entire community, both young and old, improving the vitality of a once dying community. A contractor has also subdivided numerous acres for housing growth.

All of these and other reclaimed acres have been at NO COST to the taxpayer.

Let's look at net benefit and cost benefit comparisons.

I mentioned some of the benefits that these waste coal to energy plants provide in removing the waste coal from areas.

What will be the result if we force these plants to close with unreasonable regulations?

- Nearby streams will continue to be contaminated and remain unsightly and unhealthy waterways that traverse through our small towns.
- The runoff will contaminate the surface and groundwater, threatening our communities water supplies. Remember that WATER is the key to any development from industry to recreation.
- Public safety is at risk with quads and trikes using the waste coal piles as race tracks and obstacle courses.
- If the piles are left standing, they will eventually self-ignite, releasing contaminants such as nitrous oxide, hydrogen sulfide, sulfur dioxides, polycyclic organics (Phenols), Arsenic, boron, iron, manganese, titanium, lead, chromium, and vanadium. These worse than the emissions from these small waste coal burning plants. There are at least 40 piles currently burning in PA. Past research by EPA (1978), the US Geological Survey, and Finkleman (2004) has indicated that these burning piles are hazardous to the health and safety of our citizens.
- Furthermore, the *EPA has indicated* that because of the unique environmental benefits that coal refuse fired EGU's (electric generating unit) provide, these units warrant special consideration so as to prevent the

amended NSPS (New Source Performance Standards) from discouraging the construction of future coal refuse fired EGU's in the US.

As stated above, the waste coal to energy plants are not the same as the large coal fired power plants that use deep and surface mined coal. The large coal burning plants each produce

- 1600 MW+ of electricity per day compared to the waste coal plants in Cambria County that produce 103 MW, 85 MW and 55 MW respectively.
- Keystone Power Plant (Coal burning) emits 1600 pounds of Mercury per year whereas the Colver waste coal plant emits 8 ounces of mercury per year. (Not a TYPO).
- The waste coal plants reduce sulfur by 92+% but the large coal power plants have little or no reduction in sulfur emission.
- EPA wants the small plants to reduce their mercury emissions *70% of 8 ounces* and the large coal plants *70% of 1600 pounds* of mercury emissions. The cost of the modifications for the small waste burning plants would be prohibitive, and the proposed amount is nearly undetectable.

We feel this is not equitable and one regulation does not fit all plants the same. It is an overburdening, unfair regulation. We support the House bill that will examine the EPA regulation on emissions from waste coal plants.

We feel that the waste coal plants provide a greater benefit to the environment, communities, and residents of the unregulated coal mining regions of the past. The amount of pollution removed and steams restored to new life must be considered as greatly beneficial to the people of the United States. These waste coal plants are a great example of ingenuity, cutting edge technology and concern

for the environment. The positive impact of the waste coal burning plants include enhancements on land, water, air, living organisms, as well as the social, cultural and economic environments.

Thank you for the opportunity to share our perspective with you today. We hope you will consider this statement when designing legislation--the SENSE ACT H.B. 3797.

Mr. WHITFIELD. Thank you so much.

Mr. Walke, welcome back. We appreciate your being here this morning. You're recognized for 5 minutes.

STATEMENT OF JOHN WALKE

Mr. WALKE. Thank you, Chairman Whitfield and members of the committee. It is good to be back.

My name is John Walke and I am clean air director and senior attorney for the Natural Resources Defense Council, a nonprofit organization of scientists, lawyers and environmental specialists dedicated to protecting public health and the environment.

H.R. 3797, the Satisfying Energy Needs and Satisfying the Environment Act, is a flawed bill that would weaken air pollution standards for waste coal plants and increase dangerous and deadly pollution under two of the most important clean air rules ever adopted for coal-burning power plants. I am not here to dispute or to debate beneficial uses of waste coal to energy production, as Congressman Pallone noted. H.R. 3797 will, however, increase emissions of harmful sulfur dioxide and particulate matter pollution as well as hazardous air pollution in states with coal plants. This will impose additional avoidable health hazards on Americans. My oral testimony will make four basic points.

First, H.R. 3797 picks winners and losers under EPA's signature interstate air pollution program, the cross-state rule. It does so by favoring waste coal power burning—waste coal power burning plants at the expense of all the other in-state power plants that generate electricity with other types of coal or oil. H.R. 3797 even deprives some of these other coal plant operators of valuable economic assets to which they are entitled under current law. This political favoritism upends the neutral performance-based legal system that Congress has maintained for interstate air pollution for 39 years. H.R. 3797 deprives valuable allowances from non-waste coal plant operators that make cleaner decisions. This deters cleaner generation and penalizes other in-state coal burning power plant operators. H.R. 3797 penalizes the coal plant operators that do not burn waste coal by reducing valuable sulfur dioxide allowances that the operator is entitled to hold or trade or sell under current law. This especially harmful element of the bill has the unjustified effect of rewarding dirtier operation by waste coal plants and penalizing less polluting decisions by coal plant operators to switch to natural gas or cease operation. Indeed, were this legislation to become law the bill would create immediate disincentives to repowering coal units to natural gas or shutting down older inefficient units. This is not good public policy.

Second, the bill attacks state rights under the Clean Air Act. The legislation deprives state officials of the flexibility and prerogative to determine from which in-state sources sulfur dioxide reductions are best secured to comply with the cross-state rule and how to achieve those reductions most effectively, equitably, and cost effectively. The legislation would take control away from states to make these basic decisions for the first time in the 39-year history of the Clean Air's program. Remarkably, the bill even goes on to place the U.S. EPA administrator in charge of decisions that the Clean Air Act today reserves to states. If state officials in Pennsylvania or

West Virginia, for example, wish to incentivize the waste coal energy industry, they may do so today under current law. State officials may grant more sulfur dioxide allowances to waste coal plant operators from the state's total emission budget under the cross-state rule. There is no need to pass legislation like this to accomplish that. Indeed, the bill would paradoxically deny state officials the flexibility and authority that they enjoy under today's law.

Third, the bill allows unhealthy levels of sulfur dioxide pollution to increase above a state's total budget level, worsening air quality in upwind and downwind states. Due to a fatal flaw in the bill discussed in my written testimony, there is no constraint in the real world on the sulfur dioxide emissions exceeding a state's overall pollution budget. The result would be more pollution in upwind and downwind states.

Fourth and finally, the bill harms Americans' health and air quality by letting waste coal plants emit excessive levels of dangerous hazardous air pollution. It adds an alternative, more lax emission standard for sulfur dioxide emissions to the two more protective standards in the rule already. The EPA has noted that some waste coal plants already are meeting either the rule sulfur dioxide standard or hydrogen chloride standard or both. Others will do so by April of this year after seeking compliance extensions and installing available pollution controls to meet the standards. When waste coal plants owners filed lawsuits challenging the mercury rule, claiming it was "virtually impossible to meet the acid gas and sulfur dioxide limits," the court had little trouble rejecting these arguments unanimously. The judges pointed to evidence showing that eight out of 19 waste coal units with data already could meet the rule's acid gas standard or alternative sulfur dioxide standard. Indeed, the court noted that some of these already compliant plants are among the best performers—let me repeat that—among the best performers in achieving hydrogen chloride reductions among all coal-burning power plants around the country.

Finally, H.R. 3797 would allow higher levels of sulfur dioxide emissions and hazardous air pollution. This outcome is harmful for Americans living in states with these coal plants and harmful to Americans living downwind from these plants.

This too is bad public policy and I urge members of the committee not to approve the bill. Thank you.

[The prepared statement of Mr. Walke follows:]

TESTIMONY OF JOHN D. WALKE

CLEAN AIR DIRECTOR

NATURAL RESOURCES DEFENSE COUNCIL

HEARING ON H.R. 3797, THE "SATISFYING ENERGY NEEDS AND

SAVING THE ENVIRONMENT ACT"

BEFORE THE SUBCOMMITTEE ON ENERGY AND POWER,

ENERGY AND COMMERCE COMMITTEE

U.S. HOUSE OF REPRESENTATIVES

February 3, 2016

Thank you, Chairman Whitfield and Vice Chairman Olson, and Ranking Member Rush for the opportunity to testify today. My name is John Walke, and I am clean air director and senior attorney for the Natural Resources Defense Council ("NRDC"). NRDC is a nonprofit organization of scientists, lawyers, and environmental specialists dedicated to protecting public health and the environment. Founded in 1970, NRDC has more than 2.4 million members and online activists nationwide, served from offices in New York, Washington, Los Angeles, San Francisco, Chicago, and Beijing. I have worked at NRDC since 2000. Before that I was a Clean Air Act attorney in the Office of General Counsel for the U.S. Environmental Protection Agency

(EPA). Prior to that I was an attorney in private practice where I represented corporations, industry trade associations and individuals.

H.R. 3797, the “Satisfying Energy Needs and Satisfying the Environment Act” (hereinafter “H.R. 3797” or “the waste coal bill”) is a badly flawed bill that would weaken air pollution standards for waste coal plants and increase dangerous and deadly pollution under two of the most important Clean Air Act (“CAA”) rules ever adopted for coal-burning power plants. The bill will increase emissions of harmful sulfur dioxide and particulate matter air pollution, as well as hazardous air pollution, in states with waste coal plants. This will impose additional, avoidable health hazards on Americans.

The legislation unjustifiably anoints winners and losers among coal-burning power plants, weakening standards for power plants that burn waste coal while saddling power plants that burn other types of coal in the same states with additional burdens. H.R. 3797 even deprives some of these other coal plant operators of valuable economic assets to which they are entitled under current law. I urge members of the Committee to vote against this harmful and baseless legislation.

I. H.R. 3797 Favors Waste Coal Burners With Weaker Standards at the Expense of All Other Coal-Burning Power Plant Operators and Americans' Health and Air Quality.

Section 2(b) of H.R. 3797 unaccountably picks winners and losers under EPA's signature interstate air pollution program, the "Cross State Air Pollution Rule" ("CSAPR").¹ It does so by favoring waste coal-burning power plants at the expense of all other in-state power plants that generate electricity with non-waste coal or oil. This political favoritism upends the neutral, performance-based legal system that Congress has maintained for interstate air pollution for 39 years.

Under CAA section 110's interstate air pollution transport program, states and EPA are tasked with reducing air pollution from upwind states that significantly affect the ability of downwind states to meet national health-based air quality standards. See CAA § 110(a)(2)(D); 76 Fed. Reg. 48,207, *et seq.* (Aug. 8, 2011). Both upwind and downwind states also have independent obligations to reduce unhealthy air pollution levels within their own borders. 76 Fed. Reg. at 48,210. In CSAPR, EPA quantifies upwind states' emission reduction responsibilities based upon eliminating significant contributions to downwind states' unhealthy air. *Id.* It is important to understand certain crucial features of CSAPR to realize how severely H.R. 3797 overturns the rule's neutral, protective and emissions-based regime with states at the helm, and replaces it with blunt political favoritism and weaker standards, with U.S. EPA at the helm.

¹ U.S. EPA, Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals; Final Rule, 76 Fed. Reg. 48,208, *et seq.* (August 8, 2011) ("CSAPR").

A. H.R. 3797 attacks state rights and prerogatives under the Clean Air Act.

The Clean Air Act and CSAPR give upwind states like Pennsylvania or West Virginia the legal right to craft their own “state rules to achieve the required amount of emission reductions from sources selected by the state,” allotted in amounts chosen by the state. 76 Fed. Reg. at 48,209; CAA § 110(a)(2)(D).² This means upwind states may choose to reduce emissions from coal- and oil-burning power plants like the federal plan’s design, *id.* at 48,219, or these states may decide to cut emissions from some other mix of emitters in the state. *Id.* at 48,209. Upwind states may choose to grant more emissions allowances within their overall emissions budget to some sources, such as waste coal plants, and less to others. Or states may choose to follow the more neutral, emissions based framework in the federal plan, one that more equitably allocates emissions allowances based upon cost-effectiveness criteria rooted in the cost per ton of technologies already widely deployed. See generally *id.* at 48,249-48,265. To my knowledge, *all* upwind states covered by CSAPR have chosen to achieve the required emissions reduction from power plants that burn oil and coal, including waste coal where relevant, rather than from other sources like manufacturers, for example. Moreover, these states are allocating emissions allowances based upon the neutral, emissions-based formula in the federal plan that is founded on highly cost-effective technologies, rather than some other approach the states might have selected. Again, this includes states with waste coal plants like Pennsylvania and West Virginia. It is worth emphasizing these were state choices.

² For an upwind state like Pennsylvania, for example, the Commonwealth’s coal-burning power plants emit air pollution that contributes significantly to unhealthy air pollution levels in states as far away as Connecticut, Michigan, Wisconsin and Georgia—as well as Pennsylvania itself, of course.

H.R. 3797 would wrest control away from states to make these basic decisions for the first time in the 39-year history of the Clean Air Act's interstate air pollution program. The legislation would overturn each of the aforementioned choices, rights and prerogatives resting with states under the Clean Air Act. Incredibly, the bill first dictates which emissions allowance decisions upwind states must accept with respect to waste coal plants and, as a result, non-waste coal- and oil-burning power plants, decisions contrary to state choices in every upwind state under CSAPR.

Second, after deposing the role of states, the bill goes on to place the *U.S. EPA Administrator* in charge of decisions that the Clean Air Act today reserves to states:

- “In carrying out CSAPR, the *Administrator shall provide that*, for any compliance period, the allocation (whether through a Federal implementation plan *or State implementation plan*)”; H.R. 3797, sec. 2(b)(1)(B) (emphasis added);
- “any sulfur dioxide allowance allocation provided *by the Administrator* to a coal refuse electric utility steam generating unit”; H.R. 3797, sec. 2(b)(1)(C) (emphasis added);
- “*the Administrator* shall carry out subparagraph (A) by proportionally reducing, as necessary, the unit-specific sulfur dioxide allowances from each [non-waste coal] source...” H.R. 3797, sec. 2(b)(2)(B) (emphasis added).

The first bullet makes clear that H.R. 3797 intends to dictate outcomes favoring waste coal plants not just in Federal plans, but in “State implementation plans” where states have made different allocation choices. Even more amazing, the third bullet makes clear that the bill authorizes the U.S. EPA Administrator to reduce CSAPR allowances to other in-state, non-waste coal plants, an authority that the Administrator does not possess today to override different, principled state

choices. The bill and an accompanying fact sheet from the bill's primary sponsor³ offer no defensible justification for this attack on the rights and prerogatives of states under the Clean Air Act. Indeed, it remains unclear exactly why the bill's co-sponsors intend to transfer so many longstanding state rights to the federal government.

To be clear, it is entirely appropriate for the federal Clean Air Act to require upwind states to abate unhealthy levels of air pollution that blow into downwind states and significantly impair their air quality and harm public health. But within that smart system of protections, it is also appropriate to grant upwind states the flexibility and prerogative to determine from what sources those reductions are best secured, and how to achieve those reductions most effectively, equitably and cost-effectively. H.R. 3797 overrides those state flexibilities and prerogatives. And in doing so, the legislation allows unhealthy levels of sulfur dioxide pollution to increase above a state's total budget level, worsening air quality in both upwind and downwind states.

B. H.R. 3797 allows unhealthy levels of sulfur dioxide pollution to increase above a state's total budget level, worsening air quality in upwind and downwind states.

Section 2 of H.R. 3797 exercises its core favoritism for waste coal plants over all other coal-burning electricity generators by allowing waste coal plants to continue to pollute at their higher, unhealthy Phase I sulfur dioxide allowance levels. H.R. 3797, sec. 2(b)(1)(B). Recognizing this outcome to be plainly dirtier than current law, the legislation then bars the EPA Administrator from increasing the total budget of sulfur dioxide allowance allocations in states with waste coal plants. *Id.*, sec. 2(b)(1)(A). In doing so, the bill *purports* to ensure no increase in

³ *The Satisfying Energy Needs and Saving the Environment (SENSE) Act*, Representative Keith Rothfus (PA-12).

overall sulfur dioxide levels in upwind or downwind states. As explained below, however, this effort fails.

The third step of the bill's approach requires the EPA Administrator to proportionally reduce the unit-specific sulfur dioxide allowance allocations from each non-waste coal source in an upwind state covered by a CSAPR source that:

- 1) is located in a state with one or more waste coal units;
- 2) "permanently ceases operation, or converts its primary fuel source from coal to natural gas, prior to the relevant compliance period"; and
- 3) otherwise receives sulfur dioxide allowances under CSAPR for such period.

H.R. 3797, sec. 2(b)(2)(B)(i)-(iii).

This approach is fatally flawed because the second condition could easily fail to occur; there is no guarantee or evidence that in states with waste coal plants, any non-coal waste-burning units will necessarily cease operation or convert to natural gas. Yet upon its passage, the bill immediately confers the legal right upon waste coal plants to pollute at their higher Phase I CSAPR sulfur dioxide levels during the rule's second phase. H.R. 3797, sec. 2(b)(1)(B). Operators of non-waste coal-burning units that do not cease their operation or switch the units to natural gas will continue to have the legal right to pollute at the Phase II sulfur dioxide allowance levels without any allowances being reduced.

What this means is that H.R. 3797's prohibition on increasing the overall state budget or sulfur dioxide allowance allocations (sec. 2(b)(2)(A)) would become a fictional constraint—*no* constraint in the real world on sulfur dioxide emissions *exceeding* the overall state emissions budget. The Administrator need not take any steps to increase a state's total sulfur dioxide

allowances. See sec. 2(b)(2)(A). Instead, simple operation of the bill in the real world would increase sulfur dioxide levels above a state's total pollution budget. Neither waste coal plant operators nor non-waste coal plant operators in this very realistic scenario would be acting inconsistently with the bill. The result would be more polluted air in the upwind state and affected downwind states, due to H.R. 3797's flawed design and the permission it grants waste coal plants to emit higher levels of sulfur dioxide pollution than the law allows today.

C. H.R. 3797 robs valuable allowances from non-waste coal plant operators that make cleaner decisions, deterring cleaner generation and penalizing other in-state coal-burning power plant operators.

For situations where a non-waste coal plant operator does cease operation of a CSAPR-covered unit, or converts the unit to natural gas combustion, H.R. 3797 penalizes the non-waste coal plant operator by reducing valuable sulfur dioxide allowances that the operator is entitled to hold or trade or sell under current law. Section 2(b)(2)(B). The bill does this evidently in order to try to offset the increased sulfur dioxide emissions that H.R. 3797 authorizes waste coal plant to emit above the CSAPR Phase II allowance levels under current law. Section 2(b)(1)(B). This especially harmful and indefensible element of H.R. 3797 has the perverse effect of rewarding dirtier operations by waste coal plants, and penalizing less polluting decisions by coal plant operators. Switching to natural gas will produce fewer nitrogen oxide, sulfur dioxide and particulate matter emissions than either coal or waste coal combustion. Moreover, in some situations when a coal-burning unit permanently ceases operation, lost electricity generation will be made up from cleaner renewable energy resources like wind or solar energy, conservation and energy efficiency, or demand response resources. H.R. 3797 would prop up dirtier electricity

generation and higher air pollution levels from waste coal plants, at the expense of cleaner generation and better air quality.

The bill also promotes dirtier waste coal plant emissions at the expense of the valuable economic assets held by in-state power plant operators that burn oil or coal but not waste coal. A brief explanation of CSAPR's allowance allocation and trading system is warranted. Under CSAPR, EPA and upwind states allocate sulfur dioxide allowances to an existing coal-burning electric generating unit "equal to its share of the state's historic heat input for all the covered units in the program, except where that allocation would exceed its maximum historic emissions." 76 Fed. Reg. at 48,285. Covered sources, in turn, are "required to hold sufficient allowances . . . to cover the emissions from all covered units at the source during the control period." *Id.* at 48,284. Importantly, "[b]anking of allowances for use or trading in future years is allowed." *Id.* at 48,271. Moreover, "the retention of unused [CSAPR] allowances allocated for a given control period [is allowed] for use or trading in a *later control period*." *Id.* at 48,342 (emphasis added). This system incentivizes the owner-operator of a coal-burning electric generating unit under CSAPR to "overcomply with the budgets and build up a bank of allowances under the programs for future flexibility." *Id.* at 48,280. These flexibilities include using the valuable allowances for other units owned by that same owner-operator or trading the allowances. *Id.*

In CSAPR-covered states with waste coal plants, such as Pennsylvania and West Virginia, H.R. 3797 strips all other in-state coal plant operators of valuable allowance assets if the operators shut down a coal unit or switch it to natural gas combustion. Sec. 2(b)(2)(B). This creates a stark inequity between waste coal plant operators who are *both* allowed to pollute at higher Phase I CSAPR allowance level during Phase II, *and* continue to use or transfer

allowances they hold (at the same facility), versus all other in-state coal- or oil-burning unit operators that face ‘reduction’ of their unit-specific sulfur dioxide allowances if a unit is shut down or converted to natural gas. These eliminated allowances may no longer be used at the same facility or banked or traded to other facilities. Neither H.R. 3797 nor its sponsor’s fact sheet attempts to explain or justify this basic inequity, choosing instead to ignore it.

H.R. 3797 could have chosen to spread this inequity even-handedly, proportionally reducing all remaining sulfur dioxide allowance allocations in an upwind state, to cover the dirtier emissions levels the legislation authorizes for waste coal plants. The result would have been substantially smaller allowance reductions from any given CSAPR unit in a state with waste coal plants. Instead, as discussed above, the bill’s design actually *targets* cleaner generation decisions for the reduction of allowances and elimination of valuable assets by the owners and operators making those decisions. Indeed, were this legislation to become law, the bill would create immediate disincentives to repowering coal units to natural gas or shutting down older, inefficient units. This is bad public policy and another reason why members of this Committee should not approve H.R. 3797.

II. H.R. 3797 Harms Americans’ Heath and Air Quality by Letting Waste Coal Plants Emit Excessive Levels of Dangerous, Hazardous Air Pollution.

Section 2(c) of H.R. 3797 targets its weakening amendments at EPA’s signature program to reduce hazardous air pollution from oil- and coal-burning power plants under the Clean Air Act—the Mercury and Air Toxics Standards. EPA projects that this year MATS will avoid 130,000 asthma attacks, especially among children; 4,700 heart attacks; 540,000 days when

people otherwise would miss work; and up to 11,000 premature deaths.⁴ H.R. 3797 adds an alternative, more lax emission standard for sulfur dioxide emissions to the two more protective emissions standards for hydrogen chloride and sulfur dioxide that coal waste plants already may choose between under MATS. Sec. 2(c)(2)(A)(v). Under MATS, coal waste plants must meet either an emission standard for hydrogen chloride of 0.002 pounds per million Btu (equivalent to 0.02 pounds per megawatt-hour), or a sulfur dioxide emission standard of 0.20 pounds per million Btu (equivalent to 1.5 pounds per megawatt-hour). See 77 Fed. Reg. at 9,367-8 (tables 3 and 5). H.R. 3797 codifies these same emissions standards for compliance “at the election” of operators of waste coal plants. Sec. 2(c)(2)(A).⁵

H.R. 3797 weakens MATS to allow increased hazardous air pollution emissions in a section of the legislation that creates an alternative emission standard for sulfur dioxide. Waste coal plant operators may elect to meet this more lax standard rather than the more stringent sulfur dioxide and hydrogen chloride limits in MATS. The bill says that coal waste plant operators may elect to meet a sulfur dioxide emission standard “that is no more stringent than capture and control of 93 percent of sulfur dioxide across the generating unit or group of generating units....”

⁴ U.S. EPA, *Fact Sheet: Mercury and Air Toxics Standards for Power Plants*, <http://www3.epa.gov/mats/pdfs/20111221MATSummaryfs.pdf>.

⁵ This feature in itself weakens the federal Clean Air Act, by codifying these static emission standards in perpetuity for waste coal plant operators alone. Under today’s Clean Air Act, Maximum Achievable Control Technology (“MACT”) standards like MATS for power plants must be reviewed 8 years following their adoption to determine (1) whether the technology-based standards should be strengthened, and (2) whether the standards continue to impose residual risks to the public that require revisions to provide an ample margin of safety to protect public health. See 42 U.S.C. § 7412(f)(2). Under the Act’s hazardous air pollution control program since its adoption in 1990, Congress did not consider the first MACT generation standards to be static and immutable; Congress intended the protection of public health with an ample margin of safety to be the program’s highest priority. *Id.* H.R. 3797 would overthrow this longstanding system on behalf of waste coal plants, and accord them static and permanent emission standards without regard to whether waste coal plant emissions continue to impose risks and public health hazards.

Sec. 2(c)(2)(A)(v). Contrast this with current law, in MATS, where EPA observed that some waste coal plant already were meeting either the rule's sulfur dioxide standard or hydrogen chloride standard or both.⁶ EPA went on to note that "[c]urrent wet scrubber technology is capable of removing at least 99 percent of HF and HCl emissions while simultaneously achieving 96 percent *SO₂* [sulfur dioxide] removal." U.S. EPA, Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards, EPA-452/R-11-011, at 2-8, 2-9 (December 2011) (emphasis added).

When waste coal plant owners filed lawsuits challenging the Mercury and Air Toxics Standards, claiming it was "virtually impossible" to meet the acid gas and sulfur dioxide limits, the U.S. Court of Appeals for the D.C. Circuit had little trouble rejecting these arguments unanimously. *White Stallion Energy Ctr. v. EPA*, 748 F.3d 1222, 1250 (D.C. Cir. April 15, 2014). The judges pointed to clear evidence that waste coal plants *already* were meeting these limits. *Id.* EPA had evidence demonstrating that 8 out of 19 waste coal units with data already could meet the rule's acid gas standard or alternative sulfur dioxide standard. Indeed, the court noted that some of these already-compliant plants are "among the best performers" in achieving hydrogen chloride reductions among *all* coal-burning units under the rule.⁷ EPA went on to identify pollution controls that waste coal-burning units already were using to meet the standards.⁸

⁶ U.S. EPA, EPA's Responses to Public Comments on EPA's National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units, December 2011, at 587.

⁷ Brief of Respondent EPA, *White Stallion Energy Ctr. v. EPA*, 748 F.3d 1222, 1250 (D.C. Cir. April 15, 2014), pgs. 94-5.

⁸ *Id.*

With neither the facts nor the law supporting the arguments of waste coal operators, and a federal appeals court easily rejecting their claims, waste coal plant operators are resorting to outright political favoritism by seeking passage of H.R. 3797. The legislation would ignore the clear facts found by both the executive and judicial branches, facts contrary to the same claims that waste coal plant operators are pushing again, this time in Congress. The bill would overturn the unanimous decision of the D.C. Circuit rejecting the waste coal industry's complaints, a decision whose relevant reasoning the Supreme Court did not even question. H.R. 3797 would unjustifiably allow higher levels of sulfur dioxide emissions and the hazardous air pollutants for which the sulfur dioxide standard serves as a proxy. This outcome is harmful for Americans living in states with these waste coal plants and harmful for Americans living downwind from these plants.⁹ This too is bad public policy and another reason why members of this Committee should not approve H.R. 3797.

⁹ We have long known that sulfur dioxide emissions from coal burning "can also contribute to high local ambient concentrations of sulfur dioxide." See, e.g., World Bank Group, *Pollution Prevention and Abatement Handbook*, at 231 (July 1998), <http://www.ifc.org/wps/wcm/connect/5cb16d8048855c248b24db6a6515bb18/HandbookSulfurOxides.pdf?MOD=AJPERES>; CSAPR, 76 Fed. Reg. 48,209, *et seq.* Long-range transport of sulfur dioxide emissions contributing to acid rain and a host of health hazards is equally well understood. See CSAPR, *id.*

Mr. WHITFIELD. Mr. Walke, thank you very much.
And, Mr. Henry, you are now recognized for five minutes.

STATEMENT OF DAVIS HENRY

Mr. HENRY. Chairman Whitfield, distinguished members of the subcommittee, good morning and thank you for inviting me to testify.

Mr. WHITFIELD. Have you turned your mic on?

Mr. HENRY. Sorry about that. Chairman Whitfield and distinguished members of the subcommittee, good morning and thank you for inviting me to testify on this important issue.

My name is Davis Henry and I am the president of Henry Brick, which has manufactured clay brick in Selma, Alabama for over 70 years. I represent the third generation of Henrys to operate this plant. I also currently serve as the vice chairman of the board for the Brick Industry Association, the national trade association that represents manufacturers and distributors of clay brick and pavers. I am here today to speak on behalf of both my company and my industry.

Henry Brick currently employs 58 people including our manufacturing, sales, and support staff. That number hopefully will grow this year to about 95 when we bring plant two back online. It has been idle since June of 2008 due to the economy. As you can imagine, the last 8 years have been a very trying time for our company as well as the rest of the brick industry. We are committed to doing our share to protect our environment, but with a finite amount of resources we need to be sure that we know what is required of us and that the expectations will not change once the resources are committed. I am here today because we were directly impacted by a previous change in regulation and I want to ensure that my company and all remaining brick companies do not fall victim to this again.

In 2003, the first maximum achievable control technology, or MACT, standard was promulgated for our industry. This rule applied only to major sources of hazardous air pollutants, or HAP, and only to the larger kilns in our industry. For our industry with only two pollutants emitted in any large amount, the only definition of major source that really applies is a facility that has the potential to admit ten tons or more of any single HAP. Henry Brick was a major source of HAP in 2003 and had two kilns considered to be large by the EPA. We had until 2006 to install and begin operating control devices to meet the limits, which we did. We installed limestone-based systems called DLAs, or dry lime absorbers, on both our kilns at a total capital cost of about \$1.5 million.

In 2007, almost a full year after our industry achieved compliance with the 2003 MACT, it was vacated by the courts for deficiencies. Unfortunately, most of us, including Henry Brick, were unable to turn off our control devices because our existing air permits would not allow us to stop operating the controls. The cost to operate the control devices over the last eight plus years has been significant as well. During the compliance time for the 2003 Brick MACT, the number of controlled kilns in our industry soared from just over 20 to more than 100 kilns.

In 2008, the EPA began developing the replacement MACT that eventually became the 2015 Brick MACT. To develop the standard, the EPA looked at the best performing kilns including those brand new controls that would not have been in place except for the 2003 Brick MACT to establish the limits. Unfortunately, like many who installed DLAs, our kilns could not meet these new more stringent limits. We recently conducted a stacked test at our facilities that confirmed our inability to meet the limits for two of the three HAP categories. We cannot meet the mercury limit nor the PM nonmercury metals limit. To comply with the 2015 Brick MACT, we believe we would need to take out the DLAs we installed in 2006 and install a new system called a dry injection fabric filter. The EPA estimates this would cost us about \$3.8 million per kiln, almost \$8 million to our company. There is an alternate solution that may be as little as \$1.65 million but it has not been proved and we don't know how that will pan out. The EPA's estimated emission reduction for an average kiln for mercury metals is less than 400 pounds per year for an uncontrolled source. So our incremental reduction from our control kilns would be even less.

There is a way to avoid MACT compliance. In fact, the EPA's first listed option for complying with the rule is to avoid the rule by becoming a synthetic matter or synthetic area source. To become a synthetic area source a facility accepts federally enforceable limits that ensures they never emit more than the ten tons per year that makes you a major source. If you are like Henry Brick and have both of your kilns controlled with air pollution control devices, the EPA assumes that you can become a synthetic area source at little or no cost. If you follow EPA's approach to assigning cost, you would assign an annual cost of less than \$20,000 per year.

Unfortunately, our most recent tests also demonstrate that we cannot become a synthetic area source as we currently operate. We have some issues with raw materials and other things but it is going to cost money to solve these issues and it will be a lot more than \$20,000.

While compliance with this regulation alone threatens small businesses like Henry Brick, if you consider that this is the only regulation we face correctly identifying the appropriate place to spend our finite resources is critical to our survival. For example, the Occupational Safety and Health Administration is about to finalize a new permissible exposure limit for silica dust that, if promulgated as it was proposed, will add almost another million dollars in equipment that my company may need to finance and install to remedy a nonexistent silicosis threat in brick plants. Regulations like these threaten the continued existence of many small companies in our industry including mine. In fact, compliance with both of these rules at the same time could devastate much of our already threatened industry where 75 percent of the companies are small businesses.

Henry Brick simply cannot afford to try and hit another potentially moving target of Brick MACT compliance. We acted in good faith to comply with the 2003 Brick MACT and now face some of the steepest costs in the industry because we may need to take out our DLAs and replace them with this. We need the BRICK Act to ensure that we are not required to invest again until we know that

the standard is not going to change. This is not a hypothetical issue for Henry Brick. It is real. It has happened to us. Please do not let it happen again.

Thank you for introducing this bill and for taking the time to listen to me today. I am happy answering any additional questions you may have.

[The prepared statement of Mr. Henry follows:]

**Testimony of
Davis Henry
President
Henry Brick
Selma, Alabama**

**U.S House of Representatives
Energy and Commerce Committee
Subcommittee Energy and Power**

Date:	February 3rd, 2016
Time:	10:00 A.M.
Location:	Room 2123 Rayburn House Office Building Washington, D.C.
Title:	H.R. 3797, the Satisfying Energy Needs and Saving the Environment (SENSE) Act and H.R. __, the Blocking Regulatory Interference from Closing Kilns (BRICK) Act

Chairman Ed Whitfield, Ranking Member Bobby Rush, and distinguished Members of the Subcommittee, good morning and thank you for inviting me to testify on this important issue. My name is Davis Henry. I am the President of Henry Brick, which has manufactured clay brick in Selma, Alabama for over 70 years. I represent the third generation of Henry's to operate this plant. I also currently serve as the Vice Chairman of the Board for the Brick Industry Association (BIA), the national trade association that represents manufacturers and distributors of clay brick and pavers. I am here today to speak on behalf of both my company and my industry.

Henry Brick currently employs 58 people, including our manufacturing, sales and support staff. That number, hopefully, will grow this year to about 95 when we bring Plant 2 back online. It has been idle since June of 2008 due to the economy. As you can imagine, the last 8 years have been a very trying time for our company as well as the rest of the brick industry. We are committed to doing our share to protect our environment, but with a finite amount of resources, we need to be sure that we know what is required of us and that the expectations will not change once the resources are committed. I am here today because we were directly impacted by a previous change in regulation and I want to ensure that my company—and all remaining brick companies—do not fall victim to this again.

In 2003, the first maximum achievable control technology, or MACT, standard was promulgated for our industry. This rule applied only to major sources of hazardous air pollutants, or HAP, and only to the larger kilns in our industry. For our industry, with only two pollutants emitted in any large amount, the only definition of major source that really applies is a facility that has the potential to emit 10 tons or more of any single HAP. Henry Brick was a major source of HAP in 2003 and had two kilns considered to be large by the EPA. We had until 2006 to install and begin operating control devices to meet the limits, which we did. We installed limestone based systems, called dry limestone adsorbers or DLAs, on both of our kilns at a total capital cost of approximately \$1.5 million.

In 2007, almost a full year after our industry achieved compliance with the 2003 Brick MACT, it was vacated by the courts for deficiencies. Unfortunately, most of us, including Henry Brick, were unable to turn off our control devices because our existing air permits would not allow us to stop operating the controls. The cost to operate the control devices over the last 8+ years has been significant as well. During the compliance time for the 2003 Brick MACT, the number of controlled kilns in our industry soared from just over 20 to more than 100 kilns.

In 2008, the EPA began developing the replacement MACT that eventually became the 2015 Brick MACT. To develop the standard the EPA looked at the best performing kilns, including those brand new controls that would not have been in place except for the 2003 Brick MACT, to establish the limits. Unfortunately, like many who installed DLAs, our kilns cannot meet these new, more stringent limits. We recently conducted a stack test at our facilities that confirmed our inability to meet the limits for two of three HAP categories with numeric limits. We cannot meet the mercury limit, nor the PM/non-mercury metals limit. To comply with the 2015 Brick MACT, we believe we would need to rip out the DLAs and install a new lime-based system called a DIFF, which the EPA estimates would cost approximately \$3.8 million per kiln. EPA believes that there may be a solution that would only cost \$1.65 million per kiln, but that is an untested control scenario and no one knows whether it will actually work on a brick kiln- so I am uncomfortable relying on that estimate. The EPA's estimated emission reduction for an average kiln for mercury and metals is less than 400 pounds per year for an uncontrolled source, so our incremental reduction from our controlled kilns would likely be lower.

There is a way to avoid MACT compliance. In fact, EPA's first listed option for "complying" with the rule is to avoid the rule by becoming a "synthetic minor" or "synthetic area" source. To become a synthetic area source, a facility accepts Federally enforceable limits that ensures that they never emit more than the 10 tons per year that makes you a major source. If you are like Henry Brick, and have both of your kilns controlled with air pollution control devices, EPA assumes that you can become a synthetic area source at little or no cost. If you follow EPA's approach to assigning costs, you would assign an annual cost of less than \$20,000 per year.

Unfortunately, our most recent tests also demonstrate that we cannot become a synthetic area source as we currently operate. It appears that the clay we are currently using will not allow us to stay under the HAP limits. Whether we identify a new raw material source or have to modify or replace our current controls to become a synthetic area source, the cost will be significant. We are still investigating our options to determine the best course of action.

While compliance with this regulation alone threatens small businesses like Henry Brick. If you consider that this is not the only regulation we face, correctly identifying the appropriate place to spend our finite resources is critical to our survival. For example the Occupational Safety and Health Administration is about to finalize a new permissible exposure limit for silica dust that, if promulgated as it was proposed, will add almost another million dollars in

equipment that my company may need to finance and install to remedy a non-existent silicosis threat in brick plants. Regulations like these threaten the continued existence of many small companies in our industry, including mine. In fact, compliance with both of these rules, at the same time, could devastate much of our already-threatened industry, where 75% of the companies are small businesses. This is documented in a report issued earlier this week by the U.S. Chamber of Commerce entitled Regulatory Indifference Hurts Vulnerable Communities. The report, which I include as an attachment to my testimony today, examines the burdens of complying with the EPA and OSHA rules for Henry Brick and other brick plants in comparison with the slight benefits of the two rules. The report concludes that, in the case of the brick industry, compliance with the EPA and OSHA rules is likely to cause more harm than it does good.

Henry Brick simply cannot afford to try to hit another potentially moving target of Brick MACT compliance. We acted in good faith to comply with the 2003 Brick MACT and now face some of the steepest costs in the industry because we may need to rip out our DLAs and replace them with DIFFs. We need the BRICK Act to ensure that we are not required to invest again until we know that the standard is not going to change. This is not a hypothetical issue to Henry Brick. It is real. It happened to us. Please do not let it happen again.

Thank you for introducing this bill and for taking the time to listen to me today. I am happy to answer any additional questions you may have.

[The addendum to Mr. Henry's testimony has been retained in committee files and can be found at: <http://docs.house.gov/meetings/if/if03/20160203/104366/hhrg-114-if03-wstate-henryd-20160203-u2.pdf>.]

Mr. WHITFIELD. Thank you very much.

Mr. McAvoy, you are recognized for 5 minutes.

STATEMENT OF CREIGHTON MCAVOY

Mr. MCAVOY. Thank you.

Chairman Whitfield and distinguished members of the subcommittee, good morning and thank you for inviting me to testify on this issue that could have potentially devastating consequences to my company and to my industry.

My name is Creighton McAvoy. I am president of the McAvoy Brick Company, which has manufactured clay brick and pavers in Phoenixville, Pennsylvania for over 120 years. However, my family history with brick making goes back five generations to 1866 when my grandfather started a brick plant in Philadelphia with his brother-in-law. He eventually started two more brick yards in south Philadelphia with his sons and in 1895 he and his sons started a new corporation to make vitrified street pavers in Phoenixville. We are still making brick on that site today.

In 2006, McAvoy Brick employed 26 hourly union employees and six salaried employees working year round and had sales of over \$5.5 million. In 2012, due to the effects of the Great Recession on our industry, McAvoy Brick sales bottomed out at just under \$2.5 million and we employed four salaried employees and 20 hourlies, most of which were laid off 5 to 6 months of that year. Last year, business slightly improved to just under \$2.8 million in sales and employment increased to five salaried employees and 21 hourly employees, most of which were employed over 8 months. Throughout all this downturn, McAvoy Brick has been able to pay all its bills and for the most part stay in the black. As you can see, we are a very small business, even for the brick industry.

I am here today because while we were not required to put on controls in the last round of this regulation, it appears we will need to under this new rule. We are concerned that this regulation could become the moving target that the last Brick MACT did and that regulatory uncertainty could cripple my ability to remain in business. We are here to ask your help to ensure that what happened to companies like Henry Brick does not happen again. We believe the BRICK Act can give us this certainty we need.

I am not only here on behalf of my company; I am here on behalf of my industry, as I serve on the board of directors of the Brick Industry Association. Approximately 75 percent of the companies in the brick industry are small businesses like McAvoy Brick. They have been making brick for a hundred years or more and have been good employers and neighbors in their local communities. Our industry is committed to do our share and doing the right thing for our employees, our vendors, our customers and our community. However, as our industry continues to struggle to come out of the Great Recession, we, like all industries, have limited resources. It is imperative that these limited resources be used judiciously and on the most important issues. It is important that there is some

benefit to every dollar spent and that the money not be spent needlessly or prematurely.

We were actually one of the fortunate companies when it came to the 2003 Brick MACT. As we were able to take a production limit from 12 tons of brick per hour through our kiln down to just below 10 tons per hour, making our kiln a small kiln and not subject to those regulations. That did not come without a cost, as we could have sold some of the product from that surrendered capacity in the few years before the recession. However, we were still better off than what compliance did to our fellow brick manufacturers with large kilns.

In 2015, the 2015 Brick MACT does include some of the innovative requirements including health-based standards for over 99 percent of the hazardous air pollutants emissions from our industry's kilns. Unfortunately, the requirement for the remaining 1 percent emissions, mercury and nonmercury metals, will require the same multimillion dollar controls that would have been required before the health-based standards were conceived.

Under the 2015 Brick MACT, we will likely be required to install controls on our kiln. We will be conducting tests to determine our specific situation. According to EPA's cost estimates, they expect that we will install and operate a control device that will cost approximately \$1.5 million and become a synthetic minor source, thus avoiding the Brick MACT requirements. This control device is the same one Henry Brick installed on their kilns. If that control is incapable of helping us get out of this rule, as it was incapable for Henry Brick, we believe we will have to install a control system that EPA estimates at costing \$2.7 million to control three to five pounds of mercury and 100 to 200 pounds of metals each year. We are simply not sure anyone will loan us the money to purchase these controls or that we will be able to pay this money back, particularly if it is for the more expensive system that has never been demonstrated to work on a brick kiln emission.

While we did not have experience complying with control limits for the 2003 Brick MACT, another small company similar to ours does have experience trying to borrow money from a financial institution. In their case, the money was for renovations at one of their kilns, an investment that would make them more efficient and more productive. They spent the last 2 years trying to obtain financing for a renovation of one of their kilns. This renovation would reduce their energy cost by approximately \$500,000 per year and it took two years to find a financial institution willing to lend them the money. That company is one of the few brick companies to have had steady profit since 2007. Their financial status was very good for all those loan applications with plenty of collateral. However, it still took two years to find an institution willing to lend them the funds.

Mr. WHITFIELD. Mr. McAvoy, I let you go over about 2 minutes. If you would summarize your testimony.

Mr. MCAVOY. You may think that the loss of one small brick company will not make any difference in our overall economy. However, if McAvoy Brick is required to close their doors, more than \$2.8 million will be lost from our local economy. We pay over \$1 million in wages for 26 families. Many of these employees will have

difficulty finding other employment. Basically, we are really happy that this legislation has been introduced and we hope that it will be able to be passed. I thank the committee for allowing me the time to speak and I will be more than happy to answer any question at this time.

[The prepared statement of Mr. McAvoy follows:]

**Testimony of
Creighton McAvoy
President
McAvoy Brick
Phoenixville, Pennsylvania**

**U.S House of Representatives
Energy and Commerce Committee
Subcommittee Energy and Power**

Date:	February 3, 2016
Time:	10:00 A.M.
Location:	Room 2123 Rayburn House Office Building Washington, D.C.
Title:	H.R. 3797, the Satisfying Energy Needs and Saving the Environment (SENSE) Act and H.R. __, the Blocking Regulatory Interference from Closing Kilns (BRICK) Act

Chairman Ed Whitfield, Ranking Member Bobby Rush, and distinguished Members of the Subcommittee, good morning and thank you for inviting me to testify on this issue that could have potentially devastating consequences to my company and to the brick industry. My name is Creighton McAvoy. I am the President of The McAvoy Brick, which has manufactured clay brick and pavers in Phoenixville, Pennsylvania for over 120 years. However, my family history with brick making goes back five generations to 1866 when my great grandfather started a brick plant in Philadelphia with his brother-in-law. He eventually started two more brick yards in South Philadelphia with his sons. In 1895, he and his sons started a new corporation to make vitrified street pavers in Phoenixville and we are still making brick on that location today.

In 2006 McAvoy Brick employed 26 hourly union workers and 6 salaried employees working year round and had sales of over \$5.5 million. In 2012 due to the effects of the Great Recession on our industry, McAvoy Brick's sales bottomed out at just under \$2.5 million and we employed 4 salaried employees and 20 hourly employees, most of which were laid off 5 to 6 months. Last year business slightly improved to just under \$2.8 million in sales and employment increased to 5 salaried employees and 21 hourly employees, most of which were employed over 8 months. Throughout all of this downturn McAvoy Brick has been able to pay all its bills and for the most part stay in the black. As you can see we are a very small business, even for the brick industry.

I am here today because while we were not required to put on controls in the last round of this regulation, it appears we will need to under this new rule. We are concerned that this regulation could become the moving target that the last Brick MACT did and that regulatory uncertainty could cripple my ability to remain in business. We are here to ask your help to ensure that what has happened to companies like Henry Brick does not happen again. We believe the BRICK Act can give us the certainty we need.

I am not only here on behalf of my company; I am here on behalf of my industry, as I serve on the Board of Directors of the Brick Industry Association. Approximately seventy-five percent of the companies in the brick industry are small businesses and like McAvoy Brick, they have been making brick for a hundred years or more and have been good employers and neighbors in their local communities. Our industry is committed to doing our share and to doing the right thing for our employees, our vendors, customers and communities. However, as our industry continues to struggle to come out of the Great Recession, we like all industry, have limited resources. It is imperative that these limited resources be used judiciously and on the most important issues. It is important that there is some benefit to every dollar spent and that the money not be spent needlessly or prematurely.

We were actually one of the fortunate companies when it came to the 2003 Brick MACT as we were able to take a production limit from 12 tons of brick per hour through our kiln, down to just below 10 tons per hour, making our kiln a small kiln and not subject to those regulations. That did not come without a cost, as we could have sold some of the product from that surrendered capacity in a few of the years before the recession. However, we were still better off than what compliance did to our fellow brick manufacturers with large kilns.

The 2015 Brick MACT does include some innovative requirements, including health-based standards for over 99 percent of the hazardous air pollutant emissions from our industry's kilns. Unfortunately, the requirements for the remaining 1% emissions, mercury and non-mercury metals, will require the same multi-million dollar controls that would have been required before the health based standards were conceived.

Under the 2015 Brick MACT, we would likely be required to install controls on our kiln. We will be conducting tests to determine our specific situation. According to EPA's cost estimates, they expect that we will install and operate a control device that will cost approximately \$1.5 million and become a synthetic minor source, thus avoiding the Brick MACT requirements. This control device is the same one that Henry Brick installed on their kilns. If that control is incapable of helping us get out of this rule, as it was incapable for Henry Brick, we believe have to install a control system that EPA estimates as costing \$2.7 million to control 3-5 pounds of mercury and 100-200 pounds of metals each year. We are simply not sure anyone will loan us the money to purchase these controls or that we will be able to pay this money back, particularly if it is for the more expensive system that has never been demonstrated to work on brick kiln emissions.

While we did not have experience complying with control limits for the 2003 Brick MACT, another small brick company similar to our does have experience trying to borrow money from a financial institution. In their case, the money was for renovation of one of their kilns -- an investment that would make them more efficient and more productive. They spent the last two years trying to obtain financing for a renovation of one of their kilns. This renovation would reduce their energy cost by approximately \$500,000 per year and it took two years to find a financial institution willing to lend them the money. That company is one of the few brick companies to have had a steady profit since 2007. Their financial status was very good for all these loan applications, with plenty of collateral; however it still took two years to find an institution willing to lend them the funds.

After their experience in the current financial lending environment, I cannot say for certain that we would ever be able to borrow the money required to finance air quality controls that will increase our costs dramatically without adding to our efficiency, revenue or product quality. Especially since these controls will do very little to improve the air quality near our plant.

You may think that the loss of one small brick company will not make any difference in our overall economy. However, if McAvoy is required to close our doors, more than \$2.8 million will be lost from our local community. We pay over \$1 million in wages for 26 families. Many of our employees would have difficulty finding other employment due to their low level of education.

The BRICK Act would allow us some time to see exactly what is needed to comply with the Brick MACT and ensure that we are not investing in equipment that is not needed to protect the environment. The brick industry's past experience with the 2003 MACT compliance showed us how easily millions of dollars in investment for air controls can be made obsolete. Let us not repeat the past errors which could cause many small businesses in our industry to close their doors unnecessarily. Our industry association's technical task force believes that there are some mistakes in how EPA set the limits and that these may be fixable. If so, we may not need the same control equipment to meet the standard. This could save our company and the jobs of our 26 employees.

I thank the Committee for introducing the BRICK Act and allowing me the time to speak on behalf of my company and my industry. I will be more than happy to answer any questions you may have at this time.

Mr. WHITFIELD. Well, thank you and I thank all of you for your testimony and at this time I recognize myself for 5 minutes for questions.

Mr. Henry, how many employees do you have in your company?

Mr. HENRY. Currently, 58.

Mr. WHITFIELD. Fifty-eight. And you have 26 families, Mr. McAvoy?

Mr. MCAVOY. Yes.

Mr. WHITFIELD. Recently I was reading an article and this article happened to be talking about some environmental groups who basically were saying that the end justifies the means. And that struck a chord with me because you look at the Brick MACT of 2003, that regulation which was vacated by a federal court. You look at the Utility MACT.

The Supreme Court recently found that rule to be legally flawed and remanded it back to EPA, and the day after the Supreme Court's decision EPA said in a blog that the Supreme Court ruling was of no practical impact, stating that the majority of power plants are already in compliance with our regulation or well on their way to compliance.

It is disturbing to me personally that EPA seems to be developing a pattern and they are doing the same thing with the Clean Air Act—I mean, the Clean Power Plan in which they—even Larry Tribe says it looks like you are burning up the Constitution what you're doing here and now it is at the Supreme Court on whether or not there is going to be a stay to the implementation of this act or not.

But they seem to be developing a pattern of they come forth with these regulations knowing full well the only avenue open to a company is to file a lawsuit or an association or groups to file lawsuits, knowing full well that that's going to take a period of time and the deadline for meeting the regulation is going to expire before that can be decided in the courts.

And so that is a disturbing trend and it seems to me that both of you in the brick industry are concerned about that with this 2015 act that you are going to have to comply, you are going to spend the money and the lawsuits are going to be filed and you may end up winning but in effect it is a hollow victory. Would you agree with that comment or not?

Mr. HENRY. Certainly. When we came into compliance in 2006 with the original MACT, as I have stated, we spent a million and a half dollars.

A year later it was vacated. We have had to operate those control devices since 2007 regardless of whether there was a MACT in place or not. So we have spent no telling how much money over that time operating them.

Mr. WHITFIELD. Yes.

Mr. HENRY. And now to be faced with having to replace those with new control devices that are exponentially higher in cost for only a 4 percent gain or reduction in emissions seems outrageous.

Mr. WHITFIELD. We all recognize the Clean Air Act is a very important piece of legislation and I don't think America has to take a back seat to anyone on clean environment and we can credit the Clean Air Act for it. But I do think we have to be concerned when

a pattern is developing where they are going so extreme on some of these regulations they cannot withstand legal challenge and yet the practical impact is it makes no difference because there is no avenue available.

So I think that's something we are all concerned about. Let me just ask you on the coal refuse issue and the BRICK, have you all had a lot of discussions with EPA about your particular problem?

Mr. BRISINI. Yes. In fact, those discussions occurred. There were meetings on February 29th, 2012, May 30th, 2012, March 19th, 2013, May 7th, 2013, November 5th, 2013 and—

Mr. WHITFIELD. And do you feel like you are making any progress in working on a solution with EPA on this?

Mr. BRISINI. Not at this point, no. We don't believe—

Mr. WHITFIELD. OK. What about the brick industry? Have you all been meeting with them as well?

Mr. MCAVOY. Oh, yes, we have. We worked with them and we were also able to get a health-based rule which is somewhat ground breaking.

Mr. WHITFIELD. So it has been productive for you?

Mr. MCAVOY. Oh, yes. It has been productive. However, other issues come up, the mercury and the metals and it just also seems like outside sources suing, caused these problems.

Mr. WHITFIELD. Suing to make them to comply?

Mr. MCAVOY. Well, making the change—to vacate the rule.

Mr. WHITFIELD. Yes, right. To make—yes, right. Right. Well, yes, it is really frustrating and my time is expired. So Mr. McNerney, you are recognized for 5 minutes.

Mr. MCNERNEY. I want to thank the chairman.

Today's hearing focuses on a couple of bills—oh, sorry. That was my opening statement.

We have heard today that the coal refuse facilities are unable to meet the EPA mercury and air toxic standards. But this isn't the first time we have heard that kind of claim that they can't meet the EPA standards only later to find out that the innovation made the standards achievable at minimal cost.

Mr. Walke, it is my understanding that the EPA used their maximum achievable control technology program in setting up the mercury and air toxic standards. Could you briefly describe how that program works?

Mr. WALKE. Sure. The Clean Air Act's air toxic program requires the EPA to look at the best performers in reducing toxic air pollution. EPA did so for coal electric plants and found that waste coal plants were among the very best in the country among all coal plants including those that burned bituminous, lignite and otherwise and reducing the HCL emissions that are the subject of this bill and this hearing.

The executive branch has found those emissions can be controlled. The judicial branch has found the same thing. State officials have found the same thing and plant operators are meeting the standards with equipment that is running today.

Mr. MCNERNEY. Very good. So Congress, in setting up this program, did not want to merely maintain the status quo. Congress wanted all facilities with an industrial sector to make up the nec-

essary upgrades to reduce their emissions in line with the best performing units. Is that right?

Mr. WALKE. That's correct, sir. And if I just may add some important context to a discussion that just occurred, the federal court in 2003 that struck down the BRICK standard found that the Bush administration had adopted illegally weak rules that did not reflect what the best performers can do. The rule was overturned following urgings by the Brick Industry Association, the trade group, to adopt those illegal elements in the rule and that's why the courts overturned it.

I agree it is an unfortunate situation but if anything the Bush administration induced these companies to install illegal and inadequate controls and that was overturned in court which is, unfortunately, where we are today.

Mr. MCNERNEY. Well, the advocates for this bill claim that the coal refuse facility should be treated differently from other coal fuel generation facilities, that the technology and that the fuel used would prevent these facilities from meeting MATS standards.

Did the EPA look at the coal refuse facilities while establishing the MATS standards? You sort of already answered that. Go ahead.

Mr. WALKE. They absolutely did and found them to be among the best performers, a conclusion that was validated by the court and rejecting the same arguments that you are now hearing from the waste coal industry when they were advanced unsuccessfully in a lawsuit.

Mr. MCNERNEY. Well, has the EPA considered treating these facilities differently from the other coal burning facilities?

Mr. WALKE. They already do. They allow these plants alone to meet alternative limits of HCL or sulfur dioxide in the air toxics rule and—

Mr. MCNERNEY. Is that appropriate?

Mr. WALKE. And I think that's perfectly appropriate as long as they are strict. What this bill does is relax the sulfur dioxide limit.

Another point is really critical. State officials today have the authority to treat these plants differently.

They have the authority to exempt the plants from the cross-state rule. They have chosen not to do so. They have also chosen to give them their fair share of allowances. But that is a decision that can be changed by state officials tomorrow.

Mr. MCNERNEY. Well, in your testimony you mentioned that the courts have also considered challenges to the mercury and air toxic rule based on assertions that the waste coal plants should regulate differently.

Were these challenges successful?

Mr. WALKE. They were not because the assertions were found to be unfounded.

Mr. MCNERNEY. Well, based on your response then there appears to be no justification for allowing these facilities to emit more pollution than other similar facilities.

Mr. WALKE. We certainly do not believe so, especially because we are talking about hazardous toxic air pollution and we are talking about pollution control devices that are both available and in use today.

Mr. MCNERNEY. Quickly, the results of this legislation would be, in my opinion, that other power plants in a given state covered by the CSAPR would have to drastically cut their emissions to make up the differences. Is that appropriate?

Mr. WALKE. That is a strange paradox of the bill. They favor waste coal plants by requiring all other coal-burning plants in a state with waste coal plants to give up quite valuable assets, these sulfur dioxide allowances that can be traded or sold or used at a later time.

So it's a zero sum game and the bill takes it out of the hide of remaining coal plant operators.

Mr. MCNERNEY. Very good. Thank you, Mr. Chairman.

Mr. WHITFIELD. The gentleman's time has expired. At this time the chair recognizes the gentleman from Illinois, Mr. Shimkus, for 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman. It's a great hearing to have and it's unfortunate we have two different—same but two different because I would like to get in depth on both of them and I want to try to.

First, to Mr. Henry and Mr. McAvoy, thank you for creating jobs and livelihoods. Mr. McAvoy, what's your payroll approximately? I know you probably don't have those numbers in front of you.

Mr. MCAVOY. About a million dollars.

Mr. SHIMKUS. How much taxes do you pay?

Mr. MCAVOY. You mean federal or whatever?

Mr. SHIMKUS. Federal, state. Illinois has property taxes.

Mr. MCAVOY. Well, property tax I think to the school district I think we're, like, \$60,000 a year. We're a subchapter S corporation so I don't have a federal number.

Mr. SHIMKUS. And how about health care benefits that you provide?

Mr. MCAVOY. About \$20,000 a month or more.

Mr. SHIMKUS. Right. And these are bargain—you got—your hourly folks are bargained, correct?

Mr. MCAVOY. Yes.

Mr. SHIMKUS. What's the union?

Mr. MCAVOY. Steelworkers.

Mr. SHIMKUS. OK.

Mr. MCAVOY. Steelworkers.

Mr. SHIMKUS. So, again, those are always important aspects to debate because in my opening statement the greatest driver of health concerns to our population is poverty.

So it's an important debate to have to how much you push on emissions for the sake of health when you drive people into poverty or you cause them to lose their jobs or you put them on the welfare state. So I want to continue. Thank you for fighting for that aspect.

Mr. Walke, and I appreciate you being here and I know the organization and association and you laid out a compelling case on technology in the SENSE Act. But you didn't make another credible defense of technology in respect to the BRICK Act. In fact, you said nothing about the BRICK Act. Can you tell me why?

Mr. WALKE. Sure. I was invited to testify about the SENSE Act. I have some familiarity with the Brick rule and I related some of that.

Mr. Shimkus, I will try my best to answer your questions but I didn't prepare a written testimony.

Mr. SHIMKUS. OK. Because obviously the brick industry—the debate is also rules, regulations we tried to meet. Now they're changing the rules. Now we may not be able to meet it.

So if you would, that would be helpful to me if you would come because it's just important in this debate, the cost benefit analysis.

Let me go to the—kind of segueing now to the SENSE Act. Back to you, Mr. Walke. I mean, those photos that was put up by I think Mr. Brisini are fairly compelling on reclamation and reuse.

But in your opening statement you also said I am not going to dispute or discuss—you didn't want to talk about those benefits. Why not?

Mr. WALKE. I wasn't disagreeing with those benefits is what I meant to say.

Mr. SHIMKUS. So that is part of this debate. If there are benefits and you all accept that premise, can't we get to how do we incentivize this that's beneficial to the health and the environment of our citizens based upon those very compelling photos?

I think part of the SENSE Act is let's help each other. Let's help clean up the environment but let's give a benefit for the reuse so that this can happen in an affordable—I think the other compelling thing Mr. Beck had mentioned was the reclamation of this site the cost could have been \$60 million and ended up being \$4 million. From a taxpayer's perspective, that's hard to argue—the benefits.

Mr. WALKE. And I am not. I have three specific ideas. I am going to use Pennsylvania as an example. The state officials can do today without needing to resort to a lot of the—

Mr. SHIMKUS. But they have to take from emissions of current operating facilities. I mean, so if there's a set standard and then you penalize—you know, we don't incentivize this and they give them the credits that then the proposals will take away from other operating facilities.

I need to go to, and I apologize because we really don't have much time, I want to give Mr. Brisini a chance to respond to some of the claims Mr. Walke made as far as the litigation—Bush administration and a response. Could you do that for me?

Mr. BRISINI. I would love to, thank you.

Let's talk about MACT. What MACT did in that regulation EPA lumped two groups. They said you're coal or you're lignite. There was no differentiation between coal refuse and I believe they kept coal refuse because of the exact reason Mr. Walke mentioned.

We are extremely low emitters of mercury. So they need to lump them in to the larger group so they can force the lowest mercury limit on the coal-fired plants. Also, we are extremely low emitters of particulate matter. They use a nonmetal mercury particulate alternative standard. Again, we helped set the bar lower for the other plants. But once we got drug in to allow that to happen, at that point we have HCL.

I do not agree with what he said around these plants being able to meet hydrochloric acid. There are actually two bituminous plants that can meet the hydrochloric acid. No other plants, whether they are bituminous coal refuse or anthracite coal refuse, they don't do it.

One is the last plant built in 2004 and there is a particularly unique sulfur dioxide control system which as a co-benefit happens to control hydrochloric acid. The other unit happens to burn coal refuse that doesn't have chlorine. In fact, to control mercury at that plant you need a halogen, be it chlorine. They use bromine and that is how they are able to capture the mercury because you can't capture mercury unless it's oxidized. You can't oxidize the mercury unless there's a halogen present.

Now, as far as the authority to exempt or I can do a surgical reallocation tomorrow, no, they can't. This is a FIP. This is a federal implementation plan, and to change that federal implementation plan you need a new state implementation plan.

EPA has up to 18 months to respond to a federal implementation plan change. So the idea that I can come in there and fix this tomorrow is not true and I will say it that bluntly.

Now, as far as increasing emissions and having emissions increased, no. We preserve the budget but we don't take anything away from an operating unit. There are a considerable number of units that have been retired in both Pennsylvania and in West Virginia that these are the source of the allowances. We do not increase the cap developed by EPA for Pennsylvania for SO₂. We simply say let's reallocate from the retired units. So units that are sitting there with this stuff that no longer provide jobs, no longer provide tax base, no longer provide the things that they previously provided. But we don't say take them all away.

In Pennsylvania, the reallocation split would be 65 to 35. In West Virginia, they would retain 86 percent of the allowances and the bituminous refuse plants would get 14 percent of the allowances. So there's a fundamental issue. Now, as far as the—there are some plants that are meeting the alternative sulfur dioxide standard. Yes, that is true. They are the anthracite plants. They have low sulfur coal refuse.

Mr. WHITFIELD. Thank you, Mr. Brisini. We get into this issue when—I always like to give people an opportunity to answer, particularly when they're asked the question with about four seconds left in the—it's an art.

So thank you for your comments and particularly that part about states being able to immediately give you an exemption.

Mr. Doyle, you are recognized for 5 minutes.

Mr. DOYLE. Thank you, Mr. Chairman.

I just want to maybe just go a little further with that, Mr. Brisini.

You acknowledged that some of these coal refuse plants that burn bituminous coal—even some that burn bituminous coal are able to meet MATS and CSAPR and they have not asked for an extension to comply with the regs. You imply in your testimony that is so because they are burning low sulfur bituminous coal refuse. Are there any other distinguishing features at these plants that are able to comply? Are there any technologies that other plants could adopt to mitigate the release of these pollutants and comply with the standards?

Mr. BRISINI. The circumstance you have is that there is one bituminous plant that meets the HCL. They cannot meet—because they are a bituminous plant they can meet the HCL but they can-

not meet the current alternate SO₂ limit. The other plants that can meet the alternate SO₂ limit are anthracite refuse plants in the eastern part of the state but they don't meet the hydrochloric acid limit either. Only one other plant does and there is not chlorine in the coal refuse that they burn.

Mr. DOYLE. So you are saying that there are no new technologies that are available that would allow them to comply?

Mr. BRISINI. I suppose that there would be a way. But we looked at a number of things to try to do that including the ejection of additional limestone. But it ultimately ends up in increasing of mass emissions. And something else that happens is that there is varied sulfur content in the coal refuse piles in the bituminous region that can get even higher. To simply pick a number and not look at a performance-based standard for removal would eliminate the opportunity to pursue the highest sulfur coal refuse piles to reclaim them and they probably have the highest level of acidic discharge with the greatest negative effect on a waterway.

Mr. DOYLE. Couldn't some of these plants add another type of fuel or make the waste coal their secondary fuel source so that it reduces the sulfur or HCL and helps them comply with the standards?

Is there an alternative way to deal with this?

Mr. BRISINI. Not really, no. Not from the standpoint of entering a different fuel. You can't start burning—number one, there is limitations by virtue of financing and other issues that these coal plants are obligated to burn at least 75 percent coal refuse. There is also—as you go through there is chlorine in the coal that's also burned. But there is—you can't dilute it. Plus, you are also limited into the calorific value that can go into a fluidized bed combustor. For example, the most recent one built, and as they build them they build them to be able to burn lower and lower quality coal refuse, the older ones that were built require—they burned or designed to burn about 6,800 BTUs per pound for their heat input for their fuel. The most recent one built is at 5,500 and coal is generally 12,000 to 13,000 BTUs.

Mr. DOYLE. OK. Thank you. I want to ask Mr. Walke, too.

Mr. Walke, I understand and appreciate your concern that states maintain their rights under the Clean Air Act. But you know, in my state, particularly in Pennsylvania, many elected officials strongly value these coal refuse plants on both sides of the aisle, I might add, and our own DEP, Pennsylvania's Department of DEP, submitted official comments to the EPA urging special consideration of the coal refuse-fired facilities under CSAPR. In their comments they explain the importance of these facilities to restoring the environment and preventing acid mine drainage. They ultimately concluded that constructing a rule that results in the closure of these facilities will have significant impacts on my state's ability to restore these mine-affected areas to benefit our state and our downstream neighbors.

What do you recommend the Pennsylvania DEP should do, going forward?

Mr. WALKE. Congressman Doyle, thank you for your thoughtful question and I did read those very thoughtful comments by the Pennsylvania DEP. Several things that can be done and some of

them are actually mentioned in the letter. States today have the authority to differently allocate allowances within the emitters in their state. They can do it to other coal-burning electric utilities. They can do it to non-electric sector. They have the full array of choice about how best to achieve those reductions cost effectively.

So if Pennsylvania wants to incentivize a waste coal energy production, they can do so by reallocating sulfur dioxide allowances within the electric sector. They can do a mix within the electric sector—

Mr. DOYLE. So they would have to submit a new SIP. Is that what you are saying?

Mr. WALKE. I did not mean to suggest and maybe I did by using tomorrow that this could be accomplished by midnight tomorrow. Clearly, not. But there are—

Mr. DOYLE. It sounded that way when you said it.

Mr. WALKE. Yes. Well, I apologize for that impression.

The state has the authority to design their own plan to allocate things differently than the federal model. They have the option not to do that.

Mr. DOYLE. So that gets them though CSAPR but how does that get them to comply with MATS?

Mr. WALKE. That's an excellent question. So you actually hit upon some of it yourself. There are plants in West Virginia, for example, that are using waste coal as a secondary fuel that are installing scrubbers and meeting the standard. They will do so by April. There are Pennsylvania plants who have told the state that they will undertake limestone injection in order to satisfy the standard. EPA found that there are scrubbers that can reduce emissions by 96 percent of sulfur dioxide.

The bill, of course, weakens that standard. So there are waste coal plants across the country complying with the standard or that will be complying with the standard with off-the-shelf technology that is available and EPA and the courts have both found that to be the case.

Mr. DOYLE. Mr. Chairman, thank you for your indulgence.

Mr. WHITFIELD. Yes, sir. And at this time the chair recognizes the gentleman from Ohio, Mr. Latta, for five minutes.

Mr. LATTA. Well, thank you, Mr. Chairman, and thanks for conducting today's hearing, and to our panel thanks very much for your testimony today. It's very enlightening.

If I could just start maybe between Mr. Henry and Mr. McAvoy to ask you some questions about the brick industry in general. Are bricks made all over the country? Are they regionalized? Where are most bricks being made at today?

Mr. HENRY. I am sorry. What was the—

Mr. LATTA. Where are the bricks being made at today? Is it regional or all over?

Mr. HENRY. Predominantly in the southeast and up through the Atlantic east coast but there is brick plants located all over the country.

Mr. LATTA. The next question I have is because bricks aren't light. They are pretty heavy. So I was just thinking on the transportation costs, we are looking on the transportation, how far you have to get to transport those bricks. And the question on the

transportation costs, of course, when you look at the weight and the costs there, when you are having these costs being associated with the EPA coming down on you, you are going to have to pass those costs on. I would assume you are doing that.

So Mr. McAvoy, you are shaking your head. If you would like to comment on that.

Mr. MCAVOY. Yes, it is another burden cost that is going to have to be either absorbed by us or our customers or a combination of the two.

Mr. LATTA. Well, again, when you are looking at, absorbing by you because, with the—I am not sure exactly what your margins are.

But you are going to have to somehow get that cost down to the—on the construction industry but then that is going to be cost passed on to the owner, then. It's going to be that homeowner out there that wants to build a new house that's going to have to pay more cost for the brick. Or if you are a hardworking American out there that wants to build a new factory or plant or some type of business that they are going to be using some type of brick product that is going to have to be added into that cost, I would assume.

So just in general if you could give me an idea of maybe over like the last since these regulations have come on which you have seen that you might see an average cost of a brick going up that would be passed on then to the ultimate consumer of that brick.

Mr. MCAVOY. Do you want a specific number?

Mr. LATTA. Or just an approximate, if you can do that.

Mr. MCAVOY. It would all depend on what kind of scrubber or whatever we put in. There are different options.

Davis might be able to answer that since you have been running one. How much more did that add to your cost?

Mr. HENRY. Well, you would like to think you could pass on all these costs to your customers and we certainly try. A lot of it does end up with us and it reduces your margins, makes it harder to reinvest and continue your business.

But those you can't pass on it is probably in the dollars—dollar or two per thousand range. It's not a—you can't pass on all of it. How about that?

Mr. LATTA. Right. Let me ask this, Mr. Henry, if I could. The EPA estimates that this rule would have an annual cost in the neighborhood of \$25 million while the Chamber of Commerce report cites industry estimates as high as \$100 million.

Would you like to comment on that difference between—if you have any knowledge on that from the EPA estimate of \$25 million to the Chamber estimating at \$100 million, how—we are talking \$75 million. That's quite a bit of difference there.

Mr. HENRY. Well, based on Henry Brick itself, for us to comply with the new MACT is going to cost one company \$8 million and there's a lot more than one brick company around. So I would say it's probably in the—closer to \$100 million versus the \$25 million.

Mr. LATTA. Mr. McAvoy?

Mr. MCAVOY. The EPA's numbers have a lot of assumptions that we have problems with. You know, they are just doing a guess. They don't have the exact data. We feel that we have better data and that the cost will be higher than what they project.

Mr. LATTA. Where does the EPA get their data from that they are coming up with that estimate of \$25 million?

Mr. HENRY. I don't know. I don't know.

Mr. LATTA. OK. Mr. Brisini, if I could ask you a quick question with my last 35 seconds. I'll try to be better than the gentleman from Illinois with only four seconds.

Are coal refuse-to-energy facilities typically located in smaller communities? Are these coal refuse-to-energy facilities typically located in a smaller community or a larger community?

Mr. BRISINI. The coal refuse plants are located in small communities. They are extremely important to the small communities. In the case of the three bituminous coal refuse plants that are near where I live in Edensburg, it is the county seat of Cambria County. It is less than 4,000 people population.

Mr. LATTA. Thank you very much.

Mr. Chairman, I see my time has expired and I yield back.

Mr. WHITFIELD. Thank you, Mr. Latta.

At this time I will recognize the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman and ranking member, for holding the hearing today. I want to thank our witnesses for coming and testifying.

Mr. Beck, in 2014 the Pennsylvania Department of Environmental Protection submitted comments to the Environmental Protection Agency. In these comments, the Pennsylvania DEP requested an exemption for coal waste facilities. DEP further recommended EPA establish a subcategory for waste coal technology.

Can you offer your thoughts on why your state agency submitted these comments? Oh, Mr. Beck, you're chair of the coalition of abandoned mines. Why did your state environmental agency submit those comments?

Mr. BECK. Why did they what?

Mr. GREEN. Why did they submit those comments about recommending the EPA establish a subcategory for waste coal technology? Your state environmental agency submitted comments to EPA and was there any reason for it or did they do research?

Mr. BECK. Mr. Brisini worked for DEP too so I think he—

Mr. BRISINI. I can explain. I can explain, and it gets back to the point I made about how they did MACT. When EPA did MACT they did not—

Mr. GREEN. Could you pull the mic a little closer?

Mr. BRISINI. Yes, sure. They did not establish separate categories for coal refuse or different types of coal, anthracite coal or bituminous coal. They turned it into two categories—lignite, everybody else.

So the point that was being made is to appropriately address and prepare appropriate standards for the coal refuse plants you should look at the emissions that are achieved by the coal refuse plants. That's how you do a MACT regulation. You look at the top 12 percent of the performing existing facilities and you pick from those numbers. That's exactly why they put them together though because they wanted the mercury number to be as low as possible.

Mr. GREEN. Most of the testimony offered today highlights the environmental benefits of the coal waste technology. In 2011, how-

ever, the Clean Air Council submitted comments to the EPA stating the more environmentally friendly way of dealing with waste coal would be more cost effective as well. Can any of the panel comment on the Clean Air Council's proposal to plant, for example, beach grass and if their comment holds true?

Mr. BRISINI. Well, we have tried to investigate the beach grass claim and what they did, and I have only ever been able to find an overview of the study—I have never found the study, I have never found background information on the particular pile they wanted to introduce the beach grass to. The fundamental premise of that study is they want to introduce beach grass and it will grow for a period of time and then they will start to repopulate and then other native species will overtake the refuse pile. We don't believe that that addresses the issue because it doesn't address percolation, surface runoff and it doesn't prevent future fires from occurring within the piles because a coal refuse fire does not start on the top by somebody throwing a match on it. It starts from the inside. In my written testimony, I provided a coal refuse white paper that discusses refuse fires and those sorts of things. But no, we do not believe beach grass is any solution.

I kind of look at it as, if somebody's coming and you want to clean up the house so you throw the stuff in the closet.

Mr. GREEN. OK. Mr. Walke, in your testimony you cite White Stallion and in that case the D.C. court states, among other things, that EPA notes that CFBs were among the best and worst performers of various pollutants.

Is the technology and retrofitting the difference between the best and the worst in the categories discussed by the D.C. court?

Mr. WALKE. Well, the D.C. court upheld EPA's standard in all respects and that finding wasn't challenged by the Supreme Court with respect to the standards themselves and the achievability of the standards and the propriety of the emission limits. The EPA did create a separate subcategory for the lignite coal in your state, Congressman Green, and there are technologies that are more appropriate to lignite. But the court specifically rejected a challenge by the trade association for the waste coal industry and said EPA was correct not to have established a subcategory for waste coal, and then Pennsylvania DEP asked EPA to reconsider that after the failed court challenge.

Mr. GREEN. Mr. Chairman, in our district you heard over the years I have five refineries that generate tons of petroleum coke that we can't burn and we're lucky enough to have a ship channel where we load it onto a ship and send it to Africa, India, wherever else. That is not possible in Pennsylvania because the rail cost of the transportation to somewhere would be, I guess, huge and so economically disadvantaged. Is that correct?

Mr. WALKE. I think that's correct and it is important to note where there is agreement here. I am not arguing that we shouldn't be able to combust this and they are not arguing that they shouldn't have to control emissions. What we are arguing about is whether the standards that have been issued by EPA and upheld by the courts and that are being achieved today and that will be achieved with available technology should be weakened by this bill or allowed to continue.

Mr. GREEN. Thank you, Mr. Chairman.

Mr. WHITFIELD. At this time, the chair will recognize the gentleman from West Virginia, Mr. McKinley, for 5 minutes.

Mr. MCKINLEY. Thank you, Mr. Chairman.

I suppose I really want to just address the SENSE Act over the coal refuse legislation. I am trying to take it from a little bit different perspective, maybe from 30,000 feet and that is all these new standards.

Just imagine the less—there will be so much less acrimony, differences of opinion, particularly back to you, Walke—if these were applicable only to new construction.

If a new coal refuse facility had to be constructed it has to follow these new standards. What I find offensive here in Washington is these new standards are put together and then they are applied retroactively back to existing facilities.

I come from the construction industry and I can just assure you right now that the Cannon Office Building doesn't comply with all the proper air quality—indoor air quality standards. It is laden with asbestos but yet we don't go back and make them retroactively address that unless we are going to do a major renovation. This room in and of itself also doesn't comply with indoor air quality standards of air turnovers. Neither does the Cannon Office Building.

The Capitol building doesn't comply. But yet we are allowed to continue to use it. We walk across floor tile that's laden with asbestos. We have got asbestos in our plaster walls and it is OK. But yet you go after a coal refuse energy facility and say these new standards, you have to go back and retroactively do that.

I just think it is disingenuous the way we approach some of these things and I think it's a disservice to the taxpayers and anyone else when we apply—in your words, picking winners and losers. In schools and office buildings, we don't make them go back and retroactively do that but yet we are doing it to industry. We are doing it to the coal industry and I am troubled with that and I just know that we'd have a lot less acrimony—I think we could get along with a lot of our regulations if we imposed a new reg only applicable to a new power plant, not to go back and shut them down.

And I am a little concerned because I'm hearing from testimony from the—and reading the document that when we have two facilities in my district in West Virginia, they are going to shut down under these standards and we are treating as though as they are not being truthful.

They can do it. I guess they can if they can get the money to do it and people are willing to pay the additional cost of energy that they are going to create as a result of that, and apparently what they have found out is that there is no interest in that. The people that are consuming don't want to pay that so they are going to close down and we are talking about in these two over \$3 million in taxes that will be lost as a result. Sixty percent of that in West Virginia goes for schools.

We just cut out another \$1.8 million, almost \$2 million from our schools in West Virginia to accomplish something that should go forward, not retroactive. What are we thinking about when it comes to that?

I go to you, Walke. Is it more responsible to say go ahead into the future? Wouldn't you find we would have more common interests if we used common sense to apply these regs, whether it's new source performance standards? All of this and this, wouldn't it be better if we just applied it to new construction rather than old construction?

Mr. WALKE. Congressman, thank you.

I don't think so and when the 1990 law was passed—

Mr. MCKINLEY. So do you think we should shut down the Cannon Office Building then and make sure everyone leaves here because we're not in conformity with the standards that have been adopted across this country.

Mr. WALKE. So this clean air program was promoted for—

Mr. MCKINLEY. But this is indoor air quality, though, Walke. That's what I'm talking about. You're subjecting all these people to have indoor air quality that is detrimental to their health. We spend 90 percent of our time indoors and we are not complying with the indoor air quality standards. But we allow that to continue because we understand the problems there would be if we tried to retroactively address old buildings.

Why aren't we looking at it into the future? Don't you think—my time is over—I am going to submit that if we made it effective to new construction, new brick plants, new coal to refuse, coal energy, that we would not have this problem right now—that they would be designed accordingly and they would be built into the cost. But to do this retroactively is not common sense, and I yield back my time. Thank you.

Mr. WHITFIELD. At this time, the chair will recognize the gentleman from New York, Mr. Engel, for 5 minutes.

Mr. ENGEL. Thank you very much, Mr. Chairman.

Mr. Walke, I have a series of questions I would like to ask you. One of them was touched on when you had an exchange with Mr. Doyle so I would like to ask you to emphasize certain things. We have heard testimony today that all waste coal plants can meet the mercury standard under MATS but many cannot meet the hydrogen standard or the sulfur dioxide standards.

Firstly, do you agree with that assessment and in your answer if possible could you discuss the D.C. circuit court's decision in White Stallion Energy Center versus EPA?

Mr. WALKE. Certainly. Thank you, Congressman.

Let me take those one by one. One thing that hasn't come out yet at this hearing is that one of the reasons waste coal plants are meeting the mercury standard and the particulate matter standard is they qualified for an exemption—a low-emitter exemption where they are not actually—I mean, I guess you could call that meeting the standard but they qualify for a low-emitter exemption, which I think is appropriate.

Other plants have coal waste profiles or controls in place to achieve compliance. It is simply incorrect to suggest that coal waste plants burning any type of coal waste are incapable of achieving either the HCL or the SO₂ standard in the existing MATS rule.

The court rejected that claim. EPA has rejected that claim. What you have here is a case of, you know, if I can say so, special pleading to Congress to try to overturn those findings. We have applica-

tions submitted from coal waste operators announcing the controls they are going to install.

We have controls that are going to go into a place by April of this year. We have controls on plants already that are being operated.

So when the D.C. Circuit in its decision heard the full legal arguments from the trade association for waste coal operators and looked at all the evidence they presented and the evidence in the administrative record that EPA had compiled, they squarely rejected those claims in a three to nothing decision and that decision was left untouched by the Supreme Court in that relevant respect.

Mr. ENGEL. Thank you.

Janet McCabe, the acting assistant administrator for the Office of Air and Radiation of the EPA, submitted a written statement for today's hearing.

She says that the bill we are discussing today would remove the economic incentives to reduce emissions at waste coal plants because emissions allocations for those plants could not be traded under the cross-state air pollution rule, or CSAPR.

She argues that the result would be less efficient and more costly compliance with CSAPR. Do you agree with her assessment?

Mr. WALKE. Absolutely. She is just describing the mechanics of the program.

The units that retired that were referred to by one of my fellow witnesses generated valuable allowances that are held by those coal operators and that can be used by those plants or that can be traded.

And yet this bill would take them away. It would do the same for plants that converted to natural gas. There is a very robust market in tradeable allowances that was created by the 1990 law and then continued in other forms and it is just inescapable that the design of this bill would take away those valuable assets from coal plant operators in Pennsylvania, West Virginia and elsewhere and simply transfer them to waste coal operators who want to pollute at higher levels than the law today allows.

Mr. ENGEL. You mentioned that Section 2(b) of this bill would interfere with a state's rights to determine how to best comply with the requirements of EPA's cross-state air pollution rule and favors waste coal burning plants over other in-state power plants.

So this bill takes long-standing state authority, transfers it to the federal government and then uses that authority to pick winners and losers. Is that right and can you explain?

Mr. WALKE. That is right and I find it a particular paradox for sponsors whose voting records in the past have suggested such strong support for states' rights.

The law today is even handed with respect to the decisions that state officials may make about how to allocate those allowances and states make their own decision.

This disrupts that and for the first time in any interstate legislation I have ever seen takes it away from the states and paradoxically transfers it up to Washington to override the ability of those states to make different allocation decisions. It is just puzzling.

Mr. ENGEL. All right. Thank you. Thank you very much, Mr. Walke. Thank you, Mr. Chairman.

Mr. WHITFIELD. Mr. Brisini, you want to make a comment?

Mr. BRISINI. I sure do. Thank you very much.

I find it really interesting that we keep hearing this—well, this SENSE Act picks winners and losers when in fact the federal implementation plan picked the winners and losers and they happened to pick in CSAPR the bituminous coal-fired refuse plants to be the losers in the CSAPR phase two allocation.

And they also picked the bituminous coal-fired refuse plants to be the loser in MATS because, as I have said all along, the anthracite refuse plants can meet the alternative 0.2 standard.

That is because the sulfur content of the coal refuse in the anthracite region is lower. It is not because the technology is different or they have anything special and it is part of the problem when you lump all of these things together not recognizing the technical and the differences in these kinds of fuels.

Mr. ENGEL. OK.

Mr. BRISINI. Now, as far as the idea that they are usurping states' rights I find that interesting because the federal government just did that in the FIP.

If you go on to read the Pennsylvania DEP comments, you will often find in the comments what happened to cooperative federalism and that is really one of the arguments you have then.

Mr. WHITFIELD. Mr. Brisini, I gave you a chance to respond there but I need to recognize Mr.——

Mr. ENGEL. I was going to ask, Mr. Chairman, if perhaps Mr. Walke could respond to something that Mr. Brisini——

Mr. WHITFIELD. I will tell you what. Let me finish with these two and then what we will do we will let Mr. Walke and Mr. Brisini sit next to each other and then we will go at it some more.

At this time, I will recognize Mr. Johnson of Ohio for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman, and I appreciate so much the panel being here today. Very important issues we are talking about—the health of an industry, jobs, our economy. Very important.

Mr. Henry or Mr. McAvoy, can one of you talk more about the ability to get a loan for a control device to comply with the EPA's MACT? I mean, if you had to get one of these loans how would it affect your employment level at your facility?

Mr. MCAVOY. It would greatly affect it because we probably couldn't obtain the loan and even if we were able to structure it in such a way that we could make payments, the cyclical nature of our industry and so forth, you know, would probably cause us to default at some point in time.

Mr. JOHNSON. OK. Mr. Henry?

Mr. HENRY. The one thing that makes it really hard at this current juncture is that we have been through a very rough 8 years. I don't think anybody in the brick industry would say they have enjoyed the last eight years.

And so our balance sheets reflect that and so to go and try to secure a loan now and look a banker in the face and go, well, here are my financials——

Mr. JOHNSON. Sure.

Mr. HENRY [continuing]. I need \$7 million or \$8 million, there is not a bank out there that would look at ours and feel very good about being paid back.

Mr. JOHNSON. Right. Well, there's this status of a synthetic minor. You are able to get underneath the caps and that you would be then given some relief from some of this.

But how would that affect—let us say you were to be identified as a synthetic minor. How would that affect the company's ability to grow?

Mr. HENRY. That is a very good question. We have two plants that are side by side in Selma and if we became a synthetic minor we would no longer have the ability to grow in our local community. If we grew we would have to grow outside of that area.

Mr. JOHNSON. So basically that limits your ability to create jobs and provide economic growth in your community. For both of you again, Mr. Henry and Mr. McAvoy, how would this particular legislation that we are talking about, the BRICK Act, be helpful?

I mean, considering that the industry has already spent hundreds of millions to comply with a similar EPA rule in the past only to have the courts vacate the rule a few years later, how would the BRICK Act be helpful?

Mr. HENRY. I would say first we all want to do our part in the industry to be good to the environment. We want to do that.

But there is only finite resources we have to spend on that and what we don't want to have happen is have another rule vacated or the baseline change and we have spent a lot of money unnecessarily to comply with a rule that may not take effect or be changed down the road and it is a lot of money to spend not knowing that it is necessary.

Mr. JOHNSON. So letting the judicial reviews and letting the process play out before you have to comply certainly would be financially more acceptable to your industry?

Mr. HENRY. Certainly. We would know exactly what we had to do. We would have 3 years to comply with the final, final rule and make sure that we don't waste resources.

Mr. JOHNSON. OK. Mr. Henry, continuing with you, the study that you attached to your testimony states that foreign competition in the brick industry has not been a factor in the past. Is that correct?

Mr. HENRY. Foreign competition as far as importing brick from other countries, no.

Mr. JOHNSON. And can you explain why that is not a factor?

Mr. HENRY. Brick weigh a lot. They cost a lot to ship.

Mr. JOHNSON. Sure. I knew that but I wanted the rest of the committee to understand that.

How might this unique situation—that is, the relative absence of foreign competition coupled with the EPA's rules which threaten the very survival of many of the family-owned brick plants across America, how would this affect the future availability of U.S. brick?

We don't have any coming in imported. If you guys go out of business and can't produce brick, are we back to building buildings with sticks and straw?

Mr. HENRY. Or vinyl or something, yes. The brick industry is very expensive to get into not only because of the control devices but just the process itself is. And so there would not be a lot of newcomers to our industry, if I had to guess.

Mr. JOHNSON. All right. All right.

Mr. McAvoy, my time has expired but if we could—go ahead.

Mr. McAVOY. My guess what would happen is the few multinational brick companies that have access to capital and so forth would be there—

Mr. JOHNSON. To fill that void. Yes.

Mr. McAVOY [continuing]. In the market and the small—

Mr. JOHNSON. So it would be other countries that would benefit from—

Mr. McAVOY. Yes. They wouldn't be made overseas but definitely the profits would be going there.

Mr. JOHNSON. All right. Another example of policies that enable our competitors overseas, Mr. Chairman. I yield back.

Mr. WHITFIELD. Thank you. Thank you.

At this time the chair recognizes the gentleman from New Jersey, Mr. Pallone, for 5 minutes.

Mr. PALLONE. Thank you, Mr. Chairman. I wanted to ask Mr. Walke a series of questions.

The SENSE Act would give coal refuse facilities special consideration under the cross-state air pollution rule, or CSAPR, and EPA issued this rule to protect the health of millions of Americans by reducing air pollution and requiring states to reduce power plant emissions that cross state lines and contribute to air quality problems in other states.

CSAPR ensures that downwind states don't have to impose more stringent controls on local businesses to make up for the effects of increased out-of-state pollution and the rule achieves all this by creating economic incentives to reduce pollution from power plants.

So Mr. Walke, if enacted how would the SENSE Act impact the operation of the CSAPR program? Would pollution reductions still be incentivized?

Mr. WALKE. No, certainly not. Well, what the SENSE Act does is it establishes these static permanent higher pollution levels for sulfur dioxide available just to waste coal plants and everyone else has to make the accommodating reductions whether that is in your downwind state of New Jersey, Congressman Pallone, or within the State of Pennsylvania itself.

And there is available technology in the form of scrubbers to meet the lower sulfur dioxide limits in the cross-state rule and in the mercury and air toxics rule and you have plants that are either operating that equipment today or installing it.

And so this it is just kind of a raw political transfer from one sector to another after that sector suffered losses in courts when its arguments on the merits were not successful.

Mr. PALLONE. OK. Now, some of today's testimony characterizes the CSAPR provisions in the SENSE Act as merely correcting errors in how the EPA set up the CSAPR rule.

But I wanted to ask you are coal refuse facilities different than traditional coal facilities? Should EPA have treated them differently under the CSAPR rule?

Mr. WALKE. Well, certainly they are different in the fuel they burn but just as lignite and bituminous and anthracite and other types of facilities are.

What Congress said in 1990 in a law that was actually voted on by Congressman Barton. What they said is that you are supposed

to look at the best performers and the best performance and EPA found that waste coal plants met that criteria with respect to the HCL emissions that we are talking about here today.

I don't disagree with my colleague about mercury and particulate matter but that is not what this bill is about. It is about HCL and sulfur dioxide relaxations under the cross-state rule and the mercury rule.

There is available technology to meet those standards and that is really not disputed in the rulemaking record or the judicial record and I haven't seen any testimony today that actually overrides EPA's conclusion that scrubbers can meet 96 percent control reductions that will satisfy these standards and that there are plants today that are meeting those standards sometimes with lime injection being used as well.

But the coal sector has been reducing these forms of pollution for 40 years in this country and that is no different than a boiler that is using what we call waste coal.

Mr. PALLONE. All right. Well, if a state wanted to treat coal refuse facilities differently, do they have that ability to do so under the EPA rule?

Mr. WALKE. They absolutely do. That has been the hallmark of the interstate program since its inception in 1977 that they have the first crack and in fact the final crack if they want to take it.

What is really instructive after all this talk that we have been hearing of how much of a burden it is to coal waste plants that should be incentivized, there is not a single state in the country covered by the cross-state rule that departed from the formula that EPA adopted for allocating allowances.

Why is that? Because EPA used a formula that was based upon highly cost effective reductions. And so the power generators in all of those states including states with waste coal plants didn't want that formula disrupted.

Now, the waste coal plant operators did but they did not prevail in Pennsylvania or West Virginia. Their state officials made different decisions. They could change that decision and EPA would approve that change.

Mr. PALLONE. So, are the CSAPR provisions in the SENSE Act even necessary?

Mr. WALKE. No, they are not necessary and I read EPA Administrator McCabe's statement and I believe she uses that exact word. They are unnecessary.

If the State of Pennsylvania wants to reallocate allowances along the lines in the SENSE Act and to take them away from in-state coal generators or take them away from manufacturers or whom-ever they choose they may do so under today's law without any need for this legislation.

Mr. PALLONE. All right. Thank you very much. Thank you, Mr. Chairman.

Mr. WHITFIELD. At this time the chair recognizes the gentleman from Missouri, Mr. Long, for 5 minutes.

Mr. LONG. Thank you, Mr. Chairman, and Mr. Beck, you state in your testimony that the EPA wants the small coal waste plants to reduce mercury emissions, 70 percent of just 8 ounces.

How does this compare to large coal plants? Turn your mic on. Pull it real close there. People listen on the Internet and they can't hear unless you get your mic up close.

Mr. BECK. On the mercury—70 percent on the mercury, did you say?

Mr. LONG. Right. In your testimony you say EPA wants small coal waste plants to reduce the mercury emissions.

Mr. BECK. That was my understanding of the rule that they were going to put a blanket over it and require all the coal-fired power plants to reduce mercury 70 percent.

Mr. LONG. So it is the same as the large coal?

Mr. BECK. Yes.

Mr. LONG. There is no difference in the small coal plants?

Mr. BECK. I am not sure what the amounts are or the concentrations are on the anthracite coal that they have out there. But I know about the waste bituminous coal and the regular bituminous coal plants.

Mr. LONG. Are you in a position where you could discuss the financial impact of this rule on small coal waste plants?

Mr. BECK. The problem is 70 percent of 8 ounces. The one waste coal plant did a stack emission test—

Mr. LONG. Can you pull your mic a little closer for me?

Mr. BECK [continuing]. On 8 ounces—

Mr. LONG. Can you pull your microphone closer to you?

Mr. BECK [continuing]. And found 8 ounces per year coming out of the stack on an actual emissions test and the larger normal coal plants which burned the deep coal or the strip mined coal the one was producing 1,600 pounds of mercury here.

So, 70 percent of 1,600 pounds—that is a lot of emissions coming out. But how do you reduce 8 ounces by 70 percent? That is probably not detectable.

Mr. LONG. What is the impact of this for the industry as a whole, then?

Mr. BECK. They would have to spend a lot of money to try to get it down that low.

Mr. LONG. Or go out of business maybe?

Mr. BECK. And it would probably put them out of business. And my issue with that is if the small waste coal burning plants go out of business there are going to be more piles that ignite and throw many times more mercury into the atmosphere than the waste coal plants ever did.

Mr. LONG. OK. And Mr. Brisini, could you discuss the alternative compliance options and the SENSE Act for coal refuse facilities burning high sulfur coal?

Mr. BRISINI. The alternative option is to identify a performance standard 93 percent sulfur dioxide removal and add that as an option to provide for a compliance demonstration.

That would only be used by the bituminous coal refuse fired plants. People keep talking as though we are talking about all of the coal refuse plants.

The SENSE Act really provides relief for bituminous coal refuse plants. Because of the fuel makeup, the anthracite, they can meet the current alternative SO₂ standard. As far as the statement that

was made that everybody meets HCL, that is not in fact true at all.

In Pennsylvania, there is one coal refuse plant of either type, bituminous or anthracite, that meets the HCL. The circumstance is that that plant is a low emitter and that one plant was used in the development of the MACT floor.

But that's one plant. That's an outlier. It was the last plant built, came online in 2004. There are vast differences between coal and coal refuse plants. It's not only the fuel. It is the technology used to burn the fuel to make the material.

Large coal-fired power plants or pulverized coal-fired power plants, they can be equipped with selective catalytic reduction for nitrogen oxides. They can be equipped with wet flue gas scrubbers in a cost effective fashion.

That is, by the way, how the large coal-fired plants will control mercury. They will not be doing it with any mercury-specific control technology. The mercury will be removed as a co-benefit of the sulfur dioxide controlled in the coal-fired power plants.

But as far as another statement that the state gets a first crack, that is not the case in CSAPR. It's been a FIP from day one, and in fact if you go back and you look at other Department of Environmental Protection letters from Pennsylvania DEP there was great consternation raised over the FIP first because the states were not given the opportunity in CSAPR to do anything.

It was not similar to CARE where a budget was established and the states had the opportunity to develop their own allocation methodologies, which is what we did in Pennsylvania and other states did the same thing.

Mr. LONG. I am a little confused on my time. I have gone from 8—the chairman was very generous, gave me 8 minutes and 20 seconds for a while and it stopped and then a minute and now 38 seconds. I'm not sure—

Mr. WHITFIELD. You've actually been over 5 minutes but we'll give you—

Mr. LONG. Well, with that I will yield back. I have been trying to watch the clock and fit in my questions but that didn't work too well. So I think the regulators have taken a hold of our clocks.

Mr. BRISINI. The regulated, not the regulators. The regulated.

Mr. WHITFIELD. OK. Thank you. At this time I will recognize the gentleman from Oklahoma, Mr. Mullin, for 5 minutes.

Mr. MULLIN. Thank you, Mr. Chairman, and thank you to the panel for being here.

Mr. Walke, where are you from?

Mr. WALKE. I am from South Carolina.

Mr. MULLIN. South Carolina. What is your interest in Pennsylvania?

Mr. WALKE. My interest is in air pollution and this bill concerns coal plants that are—

Mr. MULLIN. Do you believe in states' rights? But do you believe in states' rights?

Mr. WALKE. Sure. There is a whole—

Mr. MULLIN. So what you are opposing is going to affect—

Mr. WALKE. South Carolina is going to award it without that.

Mr. MULLIN. Yes, but what you are opposing is going to affect the people that really live in Pennsylvania and I have a big problem with people that are injecting their opinion in a community they don't live in.

You don't understand how important it is, the way of life it is, for those that live in Pennsylvania but yet you want to inject your opinion in it. That is why we set up states' rights to begin with and you said you believe in it.

You say there's a way that states can go around it and they have the final say in it. Well, you and I both know that is absolutely not true because what happens is the EPA sets the standards and then they hold the entire state hostage for it and that is how we are putting an entire industry out of business.

And then you say that there are scrubbers that is available. Well, how much do those scrubbers cost? How much do those scrubbers cost that you are talking about to install?

What do they cost an individual or the industry to install per scrubber?

Mr. WALKE. Congressman, there are different sizes according to the size of the plant.

Mr. MULLIN. Give me an average.

Mr. WALKE. I don't think an average is possible. I don't know—

Mr. MULLIN. So you're saying that this technology is available but you don't even know what it costs and then again you are not even going to pay it because you don't even live in the state. But yet you want to put your opinion in there. I have a big problem with this.

Mr. WALKE. Congressman, I was invited to testify at this committee.

Mr. MULLIN. I understand you were invited.

Mr. WALKE. I've only lived in two states my whole life but I am testifying about a field that applies across the country.

Mr. MULLIN. I understand that you were invited. You can listen because I'm talking right now. So I understand that you were invited and I get that and I appreciate your being here.

But you start acting like all this technology is available and it is just as simple as installing it like it would be hooking up a garden hose. But you don't even know what it costs and I don't even actually know if the technology is actually there.

And Mr. Brisini, is that right? Does the technology really exist that Mr. Walke is talking about?

Mr. BRISINI. Well, this is very, very important. You can look at this and say what is—technically if you had all the money you wanted and all the money you needed and you had all the opportunity for design engineering could you design a technology to take out the difference.

Yes, you probably could but nobody would be in business anymore, especially in Pennsylvania where we operate as competitive wholesale generators. We are not rate based.

We are competitive companies no different than any other competitive company. We have to recover our costs from the PJM wholesale electric market.

If you were to attempt to build a scrubber, and I do know what scrubbers cost because I have put them on coal-fired power plants

and I have put them on big plants and I know that they don't go on little plants because the plants I used to take care of in many cases are now retired because they can't afford to put it and they are considerably larger than these plants.

In the case of a large coal-fired facility that I used to take care of as the environmental air quality manager it was a 1,700 megawatt facility. The scrubbers cost \$675 million.

You go to these small plants, and if you look at a dollar per ton you were starting with no control essentially of sulfur dioxide.

Now you look at these plants. These plants are actually controlled and they are controlled to 93 percent. The scrubber gets to 98 percent. So you are looking at this little difference of 5 percent.

So if you look at a dollar per ton basis, all of a sudden you stick a \$100 million dollar scrubber to get 5 percent more when in fact you have allowances going to retired units which are only going to sell them in the market so somebody can emit them, this is a net wash.

All of this upwind downwind discussion is not an accurate reflection. This is about preserving the budget established by EPA. It is about having a pragmatic solution that works.

It is about making it so everybody can be OK. But somebody can't be OK because they want everything the way they want and there is a way to get to the right solution.

Mr. MULLIN. Right. And just to sum it up, this isn't as easy, Mr. Walke, as just putting a muffler on a car and that is how you make it sound. And I don't mean to come across confrontational to you but you are here to testify. But yet you don't have all your facts.

I yield back.

Mr. WHITFIELD. The gentleman yields back and that concludes the questions and concludes today's hearing on these two pieces of legislation.

Once again, I want to thank all of the witnesses for being here and for giving us your perspective on both of these pieces of legislation.

We will keep the record open for ten days and we look forward to working with all of you as we make an effort to bring these bills to the floor.

And do you have anything else, Jerry? OK. So that concludes the hearing. Thank you all once again.

[Whereupon, at 12:15 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF HON. FRED UPTON

EPA regulations impact nearly every facet of the American economy, especially manufacturers and energy producers. When unnecessary or duplicative, they can have a devastating impact, particularly in small communities where job opportunities are limited. That is why Congress needs to make targeted corrections when we believe the agency has gone too far. The SENSE Act and the BRICK Act are two bills that restore balance to EPA rulemaking and merit our support.

The problem of coal refuse—the piles of unusable coal mixed with other materials near abandoned mines—is a very serious one in rural Pennsylvania and other coal mining areas. Coal refuse is a cause of air, water, and ground contamination problems in these communities.

Fortunately, a solution has emerged. Coal refuse-to-energy plants have been developed that can use this waste material to generate electricity. About 20 such facilities are currently in operation, mostly in Pennsylvania. These power plants have

thus far removed 214 million tons of coal refuse from the environment, while producing energy and jobs.

Given the proven environmental benefits of these facilities, one would hope EPA would support them, but instead the agency has issued two rules that threaten to close many of them down. Both the Cross State Air Pollution Rule (CSAPR) and the Mercury and Air Toxics Standards (MATS) apply to all types of coal-fired power plants, but are ill-suited to the unique features of coal refuse-to-energy operations. Many owners of such facilities say that these rules may force them to shut their doors.

Rep. Keith Rothfus has sponsored the SENSE Act that would provide relief for these much-needed facilities. This bill would make limited changes to the CSAPR and MATS rules in order to provide coal refuse-to-energy plants with an alternative means of compliance. It's a win for the environment and a win for affordable energy and jobs in coal country.

EPA has also targeted the brickmaking industry with stringent new emissions standards, commonly called Brick MACT. Meeting these standards is simply unrealistic for most brick makers, especially those that are small businesses. America's 131 brick facilities are major employers in their communities, like Forterra Brick in Corunna, Michigan.

It is not clear that Brick MACT will survive judicial scrutiny either—EPA's previous version of the rule in 2003 did not—but it may take several years before a final decision is handed down by the federal courts.

The BRICK Act would provide a measure of relief for this industry. The bill would delay EPA's compliance deadlines for the rule until after judicial review is completed. This will provide both additional time and much needed regulatory certainty for this sector. I thank my colleague Bill Johnson for his work on this draft bill.

The SENSE Act and BRICK Act are two reasonable measures to help ensure that jobs are protected in two important sectors of the economy. I urge my colleagues to support this legislation.

**Written Statement of Janet McCabe
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency**

**Legislative Hearing on H.R. 3797, the Satisfying Energy
Needs and Saving the Environment (SENSE) Act and H.R. __,
the Blocking Regulatory Interference from Closing Kilns
(BRICK) Act**

**Energy and Commerce, Energy and Power Subcommittee
United States House of Representatives
February 3, 2016**

Chairman Whitfield, Ranking Member Rush, members of the subcommittee, I appreciate the opportunity to provide written testimony on H.R. 3797, the Satisfying Energy Needs and Saving the Environment (SENSE) Act and H.R. __, the Blocking Regulatory Interference from Closing Kilns (BRICK) Act. Although the Administration does not have an official position on these bills, I would like to make several basic points that I hope will assist the committee in consideration of the legislation that the EPA views as unnecessary and harmful to public health and the environment.

The first bill under consideration by the committee, the SENSE Act, would place limits on the allocation and use of sulfur dioxide allowances issued under the Cross-State Air Pollution Rule

(CSAPR) for a selected subset of electric generating units (EGUs), those that use coal refuse as their main fuel source. The CSAPR protects the health of millions of Americans by requiring states to significantly improve air quality through the reduction of power plant emissions. These emissions cross state lines and contribute to ozone and fine particle pollution in other states, which is a threat to public health. An important feature of the CSAPR is the trading program that allows sources in each state to meet emission budgets in many different ways, including trading of emissions allowances between power plants within the same state and limited trading across states. This approach reduces the cost of compliance while ensuring reductions in air pollution for citizens across the CSAPR region.

While we recognize that the changes to the CSAPR outlined in the SENSE Act would not diminish the total amount of emissions reductions that CSAPR would achieve, those changes would remove economic incentives to reduce emissions at coal refuse units. The SENSE Act would provide allocations to these units that cannot be traded, thereby removing the economic value of these allowances and the economic incentive to reduce emissions in order to sell excess allowances. By re-allocating allowances from other sources within the state to these coal refuse EGUs and

then limiting the ability of these coal refuse sources to transfer allocated allowances to other facilities, the bill would economically advantage this subset of units at the expense of other units within the state—both in terms of losing otherwise available allowances and reducing compliance choices. The CSAPR’s air quality goals and allowance market are best implemented with consistent market incentives for all participants. The bill would interfere with and manipulate market conditions, since the allowances allocated to this set of EGUs would be unavailable for use by any other sources and would be surrendered at retirement. The result would be in the aggregate a less efficient and more costly compliance with the CSAPR.

Language in the SENSE Act would seemingly also remove states’ rights when determining their method of compliance with the CSAPR. The Clean Air Act gives states the authority to replace interstate transport Federal Implementation Plans (FIPs) with approved State Implementation Plans (SIPs). Further, the CSAPR expressly provides states with opportunities to reallocate allowances among their affected units. Indeed, a state that wished to reallocate the CSAPR sulfur dioxide allowances among its units in the manner provided in the SENSE Act could already have done so for the 2017 and 2018 compliance periods, and still

could do so for subsequent years, without this legislation or the restrictions it imposes on the transfer of the reallocated allowances. The SENSE Act would potentially deny states control over allocations of allowances by rendering any submitted state plan with a different allocation to these units unapprovable.

In addition to requiring changes to the CSAPR, the bill would also require the Administrator to set emission standards for acid gases from coal refuse units that are different than the limits established in the Mercury Air Toxics Standards (MATS). This would lead to increased health and environmental impacts due to increased emissions of hazardous acid gases, such as hydrogen chloride and hydrogen fluoride, and sulfur dioxide.

Generally, the SENSE Act would create an uneven playing field by creating a special market of CSAPR allowances for refuse coal units that is separate, distinct, and different from the market-based implementation approach that the rest of the EGUs that participate in the CSAPR allowance trading program use.

The second bill under consideration by the committee is the Blocking Regulatory Interference from Closing Kilns (BRICK) Act. This legislation would extend compliance deadlines for sources

covered under the Brick and Structural Clay National Emission Standards for Hazardous Air Pollutants (NESHAP) finalized in October 2015. The brick and structural clay products manufacturing and the clay ceramics manufacturing source categories contain major sources of hydrogen fluoride (HF), hydrogen chloride (HCl), and hazardous metals. These hazardous air pollutants (HAP) are associated with a variety of acute and chronic health effects, including cancer. The EPA estimates that these rules will reduce the amount of toxic air pollution emitted during production, reducing nationwide air toxics by approximately 375 tons per year in 2018.

In developing this final rule, the EPA carefully considered the requirements of section 112 of the Clean Air Act. We developed flexible compliance options and also made distinctions between requirements for small and large kilns in order to reduce the impacts of the rule on small businesses, while still meeting the requirements of the law. We have provided the maximum time allowed for compliance under the law, and sources can apply to their state for an additional year under certain circumstances. The Clean Air Act required EPA to finalize all MACT standards by 2000, and during the ensuing decade and a half sources in many other source categories have been complying with MACT

standards that limit their emissions of cancer-causing toxic air pollutants.

This legislation would harm both public health and the environment by extending compliance deadlines that would allow further emissions of toxic air pollution into the atmosphere. The BRICK Act would extend all compliance deadlines for sources covered by the Brick and Structural Clay NESHAPS, not only until litigation on the main NESHAP rule is complete, but also until the completion of any litigation on a corrections notice published in December 2015. This bill would create an incentive for parties to litigate the rulemaking and the corrections notice for as long as possible, in order to delay air pollution reductions by prolonging the extension of the compliance deadlines. The EPA estimates that for every month of extension, about 30 tons of toxic air pollution will be emitted into the atmosphere.

The EPA appreciates the opportunity to provide written testimony about the public health effects of these two bills. We stand ready to offer our technical assistance to the Committee should the Committee have any further questions.